

E78PTRU1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN THE MATTER OF THE TRUSTEESHIP
4 CREATED BY AMERICAN HOME MORTGAGE
INVESTMENT TRUST 2005-2 related to
the issuance of Mortgage-Backed
5 Notes pursuant to an Indenture dated
as of October 1, 2007,

14 Civ. 2494 AKH

6
7 WELLS FARGO BANK, N.A.,

8 Petitioner,

9 -----x

10
11 July 8, 2014
12 10:20 a.m.

13
14
15 Before:

16 HON. ALVIN K. HELLERSTEIN,

17 District Judge

18
19
20 APPEARANCES

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22 Attorneys for Wells Fargo Bank

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Trial

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Trial

1 (Trial resumes; in open court)

2 THE COURT: Good morning, everyone. Please be seated.
3 Okay. Defense case.

4 MR. ROLLIN: Good morning, your Honor. Thank you.

5 THE COURT: Good morning.

6 MR. ROLLIN: I'd like to begin with our first witness,
7 Mr. Akhil Mago, your Honor.

8 AKHIL MAGO,

9 called as a witness by the Defendant,
10 having been duly sworn, testified as follows:

11 THE COURT: Please be seated. State your name clearly
12 for the reporters.

13 THE WITNESS: Akhil Mago.

14 THE COURT: Spell it, please.

15 THE WITNESS: A-k-h-i-l, first name. M-a-g-o, last
16 name.

17 THE COURT: Okay. You may inquire.

18 MR. ROLLIN: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. ROLLIN:

21 Q. Mr. Mago, how are you employed?

22 A. I'm currently an employee at Och-Ziff Capital.

23 THE COURT: How do you spell that?

24 THE WITNESS: O-c-h-z-i-f-f.

25 Q. And what is your position at Och-Ziff?

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1 A. I'm an executive managing director.

2 Q. Are you head of trading?

3 A. No. I'm a member of the structured products group
4 responsible for investments in mortgage securities.

5 Q. Including the investments that are now in Scepter?

6 A. Correct.

7 Q. Some of the A-2 notes are held by Och-Ziff funds, correct?

8 A. Correct.

9 Q. There are other A-2 notes that are hold with Och-Ziff that
10 Och-Ziff didn't place with Scepter, correct?

11 A. I believe that's correct, yes.

12 THE COURT: I need you both to speak louder, clearer,
13 slower.

14 MR. ROLLIN: Yes, your Honor. Thank you.

15 Q. And you served as a corporate representative for Scepter in
16 a deposition notice sent to Scepter as a -- as an entity,
17 correct?

18 A. Correct.

19 Q. Now, neither Och-Ziff nor Scepter played any role in the
20 drafting of the indenture; is that right?

21 A. Correct.

22 Q. And they played no role in the drafting of the Prospectus
23 Supplement, correct?

24 A. Correct.

25 Q. And they played no role whatsoever in the underlying

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1 transaction that is the creation of the security AHMIT 2005-2,
2 correct?

3 A. Correct.

4 Q. And you have no personal knowledge, from your own
5 observation, of anything that happened in connection with that,
6 the drafting of the indenture, correct?

7 A. Can you repeat the question?

8 Q. You were not involved in drafting the indenture?

9 THE COURT: He's not brought for that. Let's avoid
10 the negatives and get into what he can contribute.

11 MR. ROLLIN: Very well. Thank you, your Honor.

12 Q. Mr. Mago, Och-Ziff made three separate purchases of A-2
13 notes in AHMIT 2005-2; is that right?

14 A. That's correct.

15 Q. And in advance of your deposition, you created a document
16 that showed those purchases and the price at which Och-Ziff
17 made those purchases, correct?

18 A. That's correct.

19 Q. Please show Exhibit BM. I now show you what's marked for
20 identification as Exhibit BM. Will you please tell me whether
21 that is the document that you presented at deposition to show
22 the three purchases by Och-Ziff of A-2 notes?

23 THE COURT: That's objectionable as to form. I don't
24 care what happened at the deposition. Depositions are not
25 evidence. Let's introduce this document as a document that's

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1 worthy of being admitted.

2 MR. PICKHARDT: And, your Honor, I would request
3 there's information --

4 THE COURT: Is that an objection?

5 MR. PICKHARDT: Objection, your Honor --

6 THE COURT: Overruled.

7 MR. PICKHARDT: -- with respect to this document.
8 It's highly confidential.

9 THE COURT: Overruled. What's the problem?

10 MR. PICKHARDT: This contains information that doesn't
11 pertain to this case, and it's highly confidential. I don't
12 have a problem with the information at the top being read into
13 the record, but the list of funds at the bottom is actually
14 information that's highly confidential and doesn't pertain in
15 any meaningful way to this action. So if Mr. Mago wants to
16 testify --

17 THE COURT: Is that so, Mr. Rollin?

18 MR. ROLLIN: Actually, your Honor, those list of funds
19 are the funds that created and deposited notes into Scepter,
20 and that was going to be my next set of questions. It is
21 relevant to this case.

22 THE COURT: You'll have to lay a foundation first.

23 MR. ROLLIN: I will.

24 BY MR. ROLLIN:

25 Q. In the top portion, Mr. Mago, under subpart one, does this

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1 document list the three purchases of A-2 notes by Och-Ziff?

2 A. Yes.

3 Q. It lists the three dates of the purchases, correct?

4 A. That's correct.

5 Q. It lists the three original face amounts of the notes
6 purchased on those dates, correct?

7 A. Correct.

8 Q. It lists the price at which the notes were purchased?

9 THE COURT: Are these agreed facts?

10 MR. ROLLIN: I'm sorry?

11 THE COURT: Are these agreed facts?

12 MR. PICKHARDT: They are, your Honor, I believe.

13 THE COURT: Okay. I'll accept the facts.

14 MR. ROLLIN: Thank you.

15 THE COURT: Give me a minute.

16 MR. ROLLIN: May I continue, your Honor?

17 THE COURT: Not yet.

18 MR. ROLLIN: Okay.

19 THE COURT: All right. Continue.

20 MR. ROLLIN: Thank you.

21 BY MR. ROLLIN:

22 Q. In section 2, entitled --

23 THE COURT: Before you get to section 2 --

24 MR. ROLLIN: Yes.

25 THE COURT: So these are three trade dates, are they

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1 not, Mr. Mago?

2 THE WITNESS: That's correct, your Honor.

3 THE COURT: And the next are the par value of the
4 notes you purchased?

5 THE WITNESS: That's the original amount. That's not
6 the current amount of the bonds.

7 THE COURT: Is it the face amount?

8 THE WITNESS: Original face, correct.

9 THE COURT: Off the record.

10 (Discussion off the record)

11 THE COURT: So these are the face amount of the notes?

12 THE WITNESS: These are the original face amounts.

13 THE COURT: Those don't change, do they?

14 THE WITNESS: The original face does not change.

15 THE COURT: All right. And the next column is what
16 you paid per unit?

17 THE WITNESS: That's correct. That's the --

18 THE COURT: So the price of 23.406 is what you paid
19 for what?

20 THE WITNESS: That's the price that is applied on the
21 then-current face. So if I can explain. The first line, we
22 bought 50 million original face of the bonds. I don't have --
23 I don't remember what the current face was, but let's say the
24 bond had factored down or paid down and, at that point, there
25 were only 20 million face outstanding; so then we would have

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1 paid 20 million times --

2 THE COURT: Off the record.

3 (Discussion off the record)

4 THE COURT: I'm sorry, go ahead.

5 THE WITNESS: Sure. So the first item we bought 50
6 million original face, which I don't have the exact amount, but
7 let's say the factored-down amount was 20 million, meaning --

8 THE COURT: So some of it is was already paid. So
9 what you did is buy the unpaid portion of the note?

10 THE WITNESS: That's correct.

11 THE COURT: At a price of 23.4006?

12 THE WITNESS: That's correct.

13 THE COURT: And what's the unit of measurement?

14 THE WITNESS: It's \$23.406 -- 4006, applied on 20
15 million current face.

16 THE COURT: Well, whatever the unexpired amount was?
17 I see.

18 THE WITNESS: Correct.

19 THE COURT: So what, do you multiply by 20 million to
20 get the --

21 THE WITNESS: Multiply by 20 million, divide by a
22 hundred would be the dollars paid.

23 THE COURT: I see. Okay. Yes.

24 MR. ROLLIN: Thank you.

25 BY MR. ROLLIN:

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1 Q. Turning to section 2, that is where it says Scepter; do you
2 see that?

3 A. I do.

4 Q. And the note there says: Form June 24, 2013. Is that the
5 date on which Scepter was formed?

6 THE COURT: Why do I need to know that?

7 MR. ROLLIN: Well, your Honor, the reason you need to
8 know the sequence here is that Och-Ziff purchased the notes,
9 some of them even after the litigation was commenced, and then
10 deposited -- well, the first purchase was deposited into
11 Scepter in 2013, after the failed consent solicitation and
12 before the litigation.

13 THE COURT: Scepter deposited the notes into Scepter?

14 MR. ROLLIN: No, your Honor. I was going to get to
15 that. The funds listed below are where Och-Ziff placed the
16 notes, and then those funds created Scepter. Those are the
17 members of Scepter. And then deposited the notes into Scepter
18 sometime between June 24th, 2013, and October 24th, 2013.

19 THE COURT: You don't establish it by this document.
20 Establish it as a matter of first course, and whether you need
21 the document or not, we'll see. So this document is withdrawn.
22 I have the facts on the top as to when Scepter purchased and
23 for how much. I don't know what it purchased because the
24 unpaid portion of the note is not shown. Take this down.
25 Continue.

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1 BY MR. ROLLIN:

2 Q. Mr. Mago, did Scepter purchase the notes or did Och-Ziff?

3 A. Och-Ziff purchased the notes.

4 Q. And did Och-Ziff place the notes into Och-Ziff managed
5 funds?

6 A. Och-Ziff purchased these securities on behalf of its funds.

7 THE COURT: Was Och-Ziff acting as a broker or a
8 dealer?

9 THE WITNESS: Och-Ziff is an investment management
10 company, which is managing money for its various constituents.

11 THE COURT: So it buys and sells in the name of
12 Och-Ziff, or are they in the name of the investment advisees of
13 Och-Ziff?

14 THE WITNESS: I believe they're in the name of
15 Och-Ziff, your Honor.

16 BY MR. ROLLIN:

17 Q. And then do they transfer the notes into the funds? Does
18 Och-Ziff transfer the notes into the funds?

19 A. Those are brought directly into the funds. They're bought
20 for the funds.

21 THE COURT: So the buyer is the fund, not Och-Ziff?

22 THE WITNESS: The buyer is the fund, correct.

23 BY MR. ROLLIN:

24 Q. And at some point --

25 A. Which is managed by Och-Ziff.

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1 Q. At some point before the commencement of this litigation,
2 did those funds transfer the notes into Scepter?

3 A. I believe that's correct, yes.

4 Q. And --

5 THE COURT: Why?

6 THE WITNESS: We form -- Again, that's an area that's
7 outside my expertise. We form a number of these SPVs from time
8 to time for various administrative and tax reasons. Scepter, I
9 believe, was formed along with a number of such other entities,
10 and at the time that Scepter was established, it had no
11 specific purpose. It was established as a part of a number of
12 such SPVs, your Honor. At some point later --

13 THE COURT: SPV, special purpose --

14 THE WITNESS: SPV, special purpose vehicle.

15 THE COURT: Special purpose vehicle.

16 THE WITNESS: And, again, this is largely handled by
17 our administrative and legal team. There are some
18 efficiencies, from an administrative, sometimes from a tax
19 view. So I believe Scepter was formed along with a number of
20 other such entities, and at a later date, the HM bonds were
21 transferred into Scepter.

22 THE COURT: Your employer is Och-Ziff. Is Semper your
23 client?

24 THE WITNESS: Is Semper?

25 THE COURT: Yes.

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1 THE WITNESS: No. I don't believe we --

2 THE COURT: Oh, Scepter was your client?

3 THE WITNESS: Scepter was the name of the SPV that was
4 formed.

5 THE COURT: Okay.

6 BY MR. ROLLIN:

7 Q. Do the proceeds of payment on the bonds go to the funds, or
8 do they go to Scepter?

9 MR. PICKHARDT: Objection, foundation.

10 THE COURT: Overruled.

11 A. Can you repeat the question?

12 Q. Sure.

13 THE COURT: He doesn't know. It's an administrative
14 matter. The ultimate beneficiaries are your customers, not the
15 special purpose vehicle, right?

16 THE WITNESS: That is correct, your Honor.

17 MR. ROLLIN: Thank you, your Honor.

18 BY MR. ROLLIN:

19 Q. When Och-Ziff purchased --

20 THE COURT: The truth is, the special purpose vehicles
21 are really holding companies for various securities that you
22 place for your various clients, and the special purpose
23 vehicles are a convenient place to keep these securities?

24 THE WITNESS: Correct. I believe there are some
25 administrative efficiencies or tax reasons for them.

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1 THE COURT: Yes. And so it's all a bookkeeping
2 enterprise. You keep on your books the entitlements of your
3 various clients to the securities held in Scepter?

4 THE WITNESS: That's correct.

5 THE COURT: Go ahead.

6 BY MR. ROLLIN:

7 Q. Does Scepter hold an economic interest in the notes?

8 THE COURT: No. It's a special purpose vehicle. The
9 whole idea is it doesn't, right?

10 THE WITNESS: The funds hold an interest in the SPV,
11 which is just a holding vehicle to keep the bonds. Eventually
12 the economic interests of the bonds are held by various funds.
13 Scepter is just an intermediary.

14 THE COURT: They're held for the benefit of the
15 various funds. The real parties in interest are the
16 beneficiaries?

17 THE WITNESS: That's correct.

18 BY MR. ROLLIN:

19 Q. Now, Och-Ziff, when it made its first purchase in January
20 of 2012, was aware of the discrepancy between the indenture and
21 the Prospectus Supplement?

22 THE COURT: Ask the question without reading the
23 question. You're not testifying, Mr. Rollin. The witness is
24 testifying. The witness has some knowledge to bring, elicit it
25 but don't lead him.

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1 MR. ROLLIN: I believe he's an adverse witness, your
2 Honor.

3 THE COURT: He's not an adverse witness. He's a
4 witness you called. I've not seen any adversity at all.

5 BY MR. ROLLIN:

6 Q. Were you aware of the discrepancy between the indenture and
7 the Prospectus?

8 THE COURT: Don't lead him.

9 Q. Did Och-Ziff know that the indenture was drafted to
10 allocate the realized losses per the A-2 notes and then the A-3
11 notes?

12 A. We did.

13 Q. And did you know that before Och-Ziff purchased the notes?

14 THE COURT: Who bought, you?

15 THE WITNESS: Yes, I was involved.

16 THE COURT: So what did you know?

17 THE WITNESS: At the time when we bought our first --
18 when we made our first purchase in January of 2012, during our
19 due diligence process, we looked at a number of things. One of
20 them --

21 THE COURT: Try to use "I." I want to know what you
22 know.

23 THE WITNESS: Sure. As a part of the investment
24 process, I follow a number of steps to do various aspects of
25 the bond.

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1 THE COURT: Sorry, you follow what?

2 THE WITNESS: A number of processes to conduct due
3 diligence on the bond. One of those processes is understanding
4 the structure of the deal. In this particular deal, I was
5 aware of a discrepancy between the indenture and the Pro Supp.

6 THE COURT: You were aware of discrepancies between
7 what?

8 THE WITNESS: The indenture and the Prospectus
9 Supplement.

10 THE COURT: Between the indenture and the?

11 THE WITNESS: Prospectus Supplement.

12 THE COURT: Okay.

13 THE WITNESS: And there were a number of things that
14 pointed to that and, therefore, in our due diligence we
15 examined that issue in detail.

16 BY MR. ROLLIN:

17 Q. And was that very discrepancy one of the factors that you
18 considered in choosing to buy --

19 THE COURT: Mr. Rollin?

20 Q. -- the note?

21 THE COURT: You know, ask that question so it's
22 permissible.

23 MR. ROLLIN: I'm sorry, I didn't understand.

24 THE COURT: How do you ask that question in an
25 admissible manner? What do you mean by discrepancy? That's

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1 how you do. You listen to the witness, not your notes. You
2 listen to the witness and you pick up on what the witness said.

3 What do you mean by discrepancy?

4 THE WITNESS: What I mean is that the allocation of
5 losses, as it was written in the indenture, was different than
6 the allocation of losses in the Prospectus Supplement.

7 THE COURT: How so?

8 THE WITNESS: In the indenture, losses are allocated
9 first to the 1-A-2 bonds and then to the 1-A-3's. Whereas, in
10 the Prospectus Supplement, the order is first with the 1-A-3
11 and then to the 1-A-2.

12 THE COURT: And what significance, if any, did this
13 have in your decision to invest?

14 THE WITNESS: It is a very significant difference,
15 given that the underlying credit performance of these mortgages
16 was fairly distressed and, therefore, losses were expected to
17 reach the AAA portion of the capital structure. And,
18 therefore, it matters whether first losses go to the 1-A-3 or
19 to the 1-A-2.

20 The way that we incorporated that -- or I incorporated
21 that in my investment process is that I looked at the value of
22 the bonds under both those scenarios, with the 1-A-2 being
23 either senior or junior to the 1-A-3, evaluated the price of
24 the bond.

25 THE COURT: How do you do that?

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1 THE WITNESS: So there are a couple of steps. The
2 first step is --

3 THE COURT: Stop a minute. Do you see what you're
4 doing when you ask questions?

5 MR. ROLLIN: Thank you, your Honor.

6 THE COURT: Go ahead. Continue.

7 THE WITNESS: There's a couple of steps. The first
8 starting point is to come up with some assumptions on the
9 underlying collateral itself. We have a number of models that
10 come up with what are expected prepayment rates, default rates,
11 loss severity rates.

12 THE COURT: These things, in effect, are fundamental
13 analyses of values of bonds?

14 THE WITNESS: Correct. You need to understand what
15 the underlying collateral is worth. So the starting --

16 THE COURT: Give you an idea of the chances that there
17 will or will not be enough interest money passing through to
18 pay the holders of the 1-A-2 and 1-A-3 notes?

19 THE WITNESS: Correct.

20 THE COURT: And, therefore, the preference or the
21 priority of payment becomes a very important investment
22 consideration?

23 THE WITNESS: Correct. So the first step is
24 understanding how much worth you expect from future collateral
25 performance. The next --

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1 THE COURT: How much worth, did you say?

2 THE WITNESS: The first step is to understand how much
3 the underlying collateral is worth, or what you expect for
4 future collateral default and severity.

5 The next step is then to translate that to the cash
6 flows of the underlying bond. Me and other market participants
7 use the industry standard called Intex.

8 THE COURT: Spell that.

9 THE WITNESS: I-n-t-e-x, is the name of the tool. I
10 believe it's used by the vast majority of participants as a
11 tool. That's a place where you input collateral assumptions,
12 and then what it does is it simulates the waterfall of the
13 deal. Meaning, it takes the underlying collateral cash flows
14 and distributes that among the various tranches. In this
15 particular example --

16 THE COURT: The tranches are the equivalents of the
17 series of notes?

18 THE WITNESS: Correct.

19 THE COURT: The 1-A-1, 1-A-2, 1-A-3 each is a tranche?

20 THE WITNESS: That is correct. In this particular
21 deal, Intex has information or a series of notes in there which
22 identifies this discrepancy between the indenture and the Pro
23 Supp, and it did have that same information when we made our
24 first purchase. That was one of the many things that led us to
25 then explore further. And Intex also gives the user the

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1 ability to toggle that order of seniority between the 1-A-2 and
2 the 1-A-3.

3 THE COURT: What do you mean by that?

4 THE WITNESS: Meaning, you can run various scenarios.
5 You can run a first scenario, where you assume that the 1-A-2
6 takes losses after the 1-A-3, and you can run another scenario
7 where you would reverse that and you say that the 1-A-2 takes
8 losses first and 1-A-3 later.

9 And so going back to our analysis, we came up with
10 fundamental collateral assumptions, then input that into this
11 tool called Intex, and then ran it both ways, came up with what
12 the price of the bond would be under both those scenarios and
13 then assigned a possibility to what we thought was a level
14 of -- was a level that we were comfortable paying that -- given
15 our own risk tolerance.

16 THE COURT: Say that again, "a level that we were
17 comfortable paying that -- given our own risk tolerance," what
18 do you mean by that?

19 THE WITNESS: Meaning, in effect, assigning some
20 probability to those two outcomes. And so, in general, the way
21 that we looked at this bond is look at it under both those
22 scenarios, which are the two boundary cases, and then look to
23 pay a price in between those two extreme scenarios, which
24 accounts for the level of risk that we are willing to take.

25 THE COURT: Was there a market for these bonds?

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1 THE WITNESS: In general, in non-agency RMBS market --
2 RMBS stands for residential mortgage-backed securities -- in
3 that market there is no one place where traders or analysts can
4 go to observe the price of a bond, unlike stocks that are
5 listed on an exchange. The only price transparency that one
6 gets is when a bond actually trades, and so to the extent that
7 there were some trades that -- in the market, those were the
8 only observations of market price.

9 THE COURT: Did you have the benefit of seeing any
10 market pricing at the time?

11 THE WITNESS: No, your Honor. The first purchase that
12 we made, we were not aware of any other prior trade.

13 THE COURT: There were no other prior trades you saw?

14 THE WITNESS: That's correct, not within a certain
15 time period. Meaning, you don't want to go back two years.

16 THE COURT: So how do you fix a price, through
17 negotiation?

18 THE WITNESS: Well, there is some generic -- all
19 market participants have their own margins and their own
20 estimates of what yields what a similar risk is trading at.
21 And so it's largely a process of trademarking versus other
22 similar bonds.

23 THE COURT: How do you know who has bonds to sell?

24 THE WITNESS: In this particular case, or in general?

25 THE COURT: In this particular case.

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1 THE WITNESS: Well, bonds come out to sell -- you
2 can't really go and try to active -- it's generally hard to go
3 out and actively source this fund.

4 THE COURT: Yes, because if somebody knows you're
5 interested, the price will be jacked up.

6 THE WITNESS: That's one of the factors, but also,
7 there are holders that just buy as investors, who don't want to
8 sell or don't need to sell. In general, all the trades that
9 we've been involved with have largely been in response to a
10 seller that came out and was willing to sell.

11 THE COURT: So some holder of these bonds wanted to
12 sell?

13 THE WITNESS: Correct.

14 THE COURT: And was the holder a 1-A-2 holder or 1-A-3
15 holder?

16 THE WITNESS: In the cases in the bonds that we
17 bought, we always bought the 1-A-2; so the holder was a 1-A-2
18 holder.

19 THE COURT: The 1-A-2 holder was selling?

20 THE WITNESS: Correct.

21 THE COURT: Did you, yourself, learn from some other
22 person that someone was interested to sell, or did someone in
23 your company let you know that?

24 THE WITNESS: It varied for the three purchases. In
25 the first purchase, this bond was a part of a large portfolio

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1 that we saw from a seller, and so they showed us an entire
2 portfolio of bonds and this was one of them, and we purchased
3 the entire portfolio.

4 I believe in the next two purchases, these were bonds
5 that were put on auction through what is known as a BWIC
6 process. It means bid wanted in competition, also known as a
7 BWIC. That's a general process that a number of sellers
8 follow, where if you have a list of bonds to sell, you send out
9 that typically Bloomberg message to a number of broker-dealers.
10 They then, in turn, forward it on to the various clients on
11 their distribution list that there is a particular time for the
12 auction. The broker-dealer then collects that bid, and then
13 submit it back to the seller, and the seller has the option at
14 that point to decide to sell the bond or not. So the next two
15 purchases were made in those BWIC processes.

16 THE COURT: Continue, Mr. Rollin.

17 MR. ROLLIN: Thank you, your Honor.

18 BY MR. ROLLIN:

19 Q. You talked, Mr. Mago, about probability of waiting in your
20 response to one of the Court's questions. What were the two
21 outcomes that you were considering before your first purchase
22 of the A-2 notes?

23 A. As I mentioned, the two outcomes were -- Intex provides
24 this toggle or the switch, where you can change the priority of
25 losses between the 1-A-2 and the 1-A-3. And so in addition to

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1 running our various collateral assumptions, we also then, for a
2 given collateral assumption, looked at the structure in those
3 two different ways -- first, with the 1-A-2 being senior;
4 second, with the 1-A-2 being junior -- that then resulted in
5 two different prices, which in our models are two boundary
6 cases.

7 THE COURT: What does a boundary case mean?

8 THE WITNESS: Meaning that's the -- those are the two
9 goalposts. It's either -- it's a binary outcome of whether the
10 1-A-2 is junior or if it's senior. And so we run the two
11 different bonds two different ways, and then get the two
12 different prices. And the way that I approached it was taking
13 off where, between those two prices, we feel comfortable from a
14 risk reward standpoint to finally pick.

15 THE COURT: You found some comfortable mean between
16 the two?

17 THE WITNESS: Correct.

18 BY MR. ROLLIN:

19 Q. Do you understand that --

20 THE COURT: If the price you can get it was better
21 than that, you bought; if it was worse than that, you went
22 away?

23 THE WITNESS: That's correct. Theoretically, for
24 example, there are certain cases where, as a buyer, you want to
25 obviously buy it for as low a price as possible, and there are

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1 a number of variables that go into this analysis with this
2 structure component being one of them.

3 They put the case where there's a seller of the bond
4 at a price even below our low price and so, obviously, we would
5 buy it as low as possible. But there was always a max that we
6 were willing to pay up to, which was determined by our own
7 risk-reward analysis.

8 THE COURT: How much time do you have to do this
9 analysis?

10 THE WITNESS: It varies depending on the process. In
11 the first purchase, we bought a large portfolio, and I don't
12 exactly recall, but my guess is we probably had over a day to
13 look at the whole portfolio of bonds. And so typically on a
14 given bond, it takes anywhere between half an hour to a few
15 hours of work, depending on what the complexity of the bond is.

16 For this particular bond, the higher end of the
17 spectrum, given the additional complexity around the allocation
18 of losses.

19 THE COURT: I feel this is worth a week in B school.
20 Continue.

21 MR. ROLLIN: Thank you.

22 BY MR. ROLLIN:

23 Q. At Och-Ziff, do you maintain a tool called bid history?

24 A. Yes, that's correct.

25 Q. And is that an internal tool that was created to store and

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1 share information about bonds?

2 A. It's a tool that was created for the purpose of storing
3 information, information about various bonds, yes.

4 THE COURT: But you had no information about these
5 bonds, did you? There was no market that you knew of?

6 THE WITNESS: Yes, some of the information was our own
7 analysts, how they were analyzing the bonds. In some cases it
8 was when we put the bonds out to sell, the prices we received
9 or what level we were looking for. So the idea is whenever an
10 analyst or a trader looks at a bond and wants to memorialize
11 any thoughts, that's one place where people save information,
12 and then that's accessible to a group of users.

13 MR. ROLLIN: Exhibit BN, please, Page 1.

14 Q. Mr. Mago, is this --

15 MR. ROLLIN: Your Honor, may I approach with
16 Exhibit BN?

17 THE COURT: Yes.

18 BY MR. ROLLIN:

19 Q. Mr. Mago, I've handed you a copy of a document marked for
20 identification as Exhibit BN, B as in boy, N as in Nora.

21 A. Yes.

22 Q. Is this a printout from the bid history tool maintained at
23 Och-Ziff?

24 THE COURT: Mr. Rollin?

25 MR. ROLLIN: Yes.

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1 THE COURT: Did you create this chart?

2 BY MR. ROLLIN:

3 Q. Did you create this chart?

4 A. The information that is presented here was created by users
5 at Och-Ziff.

6 THE COURT: By what?

7 THE WITNESS: By various analysts and traders at
8 Och-Ziff.

9 THE COURT: Did you use this chart in your analysis?

10 THE WITNESS: Yes.

11 THE COURT: Go ahead. Continue.

12 MR. ROLLIN: Thank you, your Honor. I move the
13 admission of BN.

14 THE COURT: That's the foundation?

15 MR. ROLLIN: If I need more, I'll do more.

16 THE COURT: You need more.

17 MR. ROLLIN: But I don't believe it's objected to.

18 THE COURT: I'm telling you, you need more.

19 MR. ROLLIN: Thank you.

20 THE COURT: You conduct the B class. I'll conduct the
21 legal evidence class. How do you put in a document?

22 MR. ROLLIN: Your Honor, the parties exchanged
23 documents --

24 THE COURT: How do you put in a document?

25 MR. ROLLIN: You lay a foundation.

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1 THE COURT: Do it.

2 MR. ROLLIN: Thank you.

3 BY MR. ROLLIN:

4 Q. Are the notes that are made in exhibit --

5 THE COURT: Is this document regularly kept in the
6 regular course of business?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: Was it the regular course of business to
9 have such documents?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Is this the actual material you used in
12 analyzing the bonds?

13 THE WITNESS: This is one of the many things we used.

14 THE COURT: I offer it into evidence.

15 MR. ROLLIN: I offer it into evidence. Thank you.

16 THE COURT: Any objection?

17 MR. PICKHARDT: No, your Honor.

18 THE COURT: Received.

19 (Defendant's Exhibit BN received in evidence)

20 BY MR. ROLLIN:

21 Q. Can you please turn to Page 4 in this document?

22 A. Okay.

23 Q. If it's easier to look at the screen, we've highlighted a
24 couple of boxes, portions of which I will ask you about, but
25 you may also look at the piece of paper in front of you if you

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1 prefer.

2 A. Sure.

3 Q. Are the top -- do you see column L on Page 4?

4 A. Yes.

5 Q. And is column L where the analyst at Och-Ziff reports
6 notes, at least one of the places where some notes are found,
7 with respect to your analysis?

8 A. That's correct.

9 Q. And the first note, I'd like to ask you about the first two
10 sentences in the top cell. Will you please read the first
11 sentence?

12 THE COURT: We all can read it. It's in evidence.
13 What do you want to ask?

14 MR. ROLLIN: Thank you.

15 BY MR. ROLLIN:

16 Q. Is it true -- Strike that. Was Och-Ziff working to see if
17 there was a possibility to make the trustee follow the loss
18 allocation language in the Prospectus Supplement?

19 THE COURT: Come on, don't lead the witness. Did you
20 notice the discrepancy? What did you do after you did this
21 analysis? That's how to ask a question.

22 MR. ROLLIN: Your Honor, I'm interested in the -- in
23 particular parts of it. I think they'll be very informative
24 for the Court; so I will try to ask it in a non-leading way.
25 I'd like Mr. Mago to tell us what the first sentence in the

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1 first cell means.

2 THE COURT: It's of no value to me.

3 BY MR. ROLLIN:

4 Q. Was Och-Ziff --

5 THE COURT: Everything you do has to do with
6 credibility.

7 MR. ROLLIN: I'm sorry?

8 THE COURT: Everything has to do with credibility. If
9 you want to score points through a witness, do it in a way that
10 will cause the Court to listen to the witness and assign
11 credibility factors to it. If you ask the questions in that
12 way, you're testifying, not the witness, and that means zero
13 credibility.

14 BY MR. ROLLIN:

15 Q. Does the first sentence reflect the discrepancy about which
16 you testified?

17 THE COURT: Did you have any conversations with anyone
18 who had to do with the issuance of the bonds?

19 THE WITNESS: We did have a conversation with the
20 truss --

21 THE COURT: Try to use "I."

22 THE WITNESS: Your Honor, I had one conversation --
23 actually, a couple of exchanges with Wells Fargo, who is the
24 securities admin.

25 THE COURT: Okay. With whom did you speak?

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1 THE WITNESS: Daniel Cohen.

2 THE COURT: That's how you do it. What did you say to
3 him, when? What did you say to him? What did he say to you?

4 THE WITNESS: Your Honor, I don't recall the exact
5 date. I believe that was -- that's available to --

6 THE COURT: Well, you know you bought in January of
7 2012?

8 THE WITNESS: Right.

9 THE COURT: Was it before then?

10 THE WITNESS: No, your Honor. It was some point after
11 that we had a conversation with --

12 THE COURT: You also bought in December 2013. Was it
13 before then?

14 THE WITNESS: The conversation I had was in between
15 those two dates.

16 THE COURT: Between January 2012 and December 2013?

17 THE WITNESS: Correct, your Honor. And the
18 conversation was to talk to the trustee to understand -- or I
19 believe it was the securities admin, to understand how they
20 looked at this issue of the discrepancy between the indenture
21 and the Prospectus Supplement.

22 THE COURT: So what did you say and what did they say?

23 THE WITNESS: The conversation that I had, we also had
24 our internal counsel on the phone with Dan Cohen. We pointed
25 out the discrepancy between the indenture and the Pro Supp.

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1 THE COURT: Dan Cohen is at Wells Fargo?

2 THE WITNESS: That's correct, your Honor.

3 THE COURT: You pointed out the discrepancy. What did
4 Mr. Cohen say?

5 THE WITNESS: He pointed out the section of the
6 indenture which related to an amendment and mentioned that in
7 order for an amendment of the documents, it would need a
8 hundred percent note holder consent, and so that was the
9 conversation that I had.

10 Subsequent to that, there were other conversations
11 that our internal counsel had with Deutsche Bank, the trustee,
12 and Wells Fargo, the securities admin. I was not personally
13 involved in those conversations, but that happened at a later
14 point.

15 BY MR. ROLLIN:

16 Q. Did you advocate for a reversal of the loss allocation
17 priority?

18 THE COURT: Is that -- Did you tell us everything that
19 you remember from the conversation?

20 THE WITNESS: Yes, your Honor, in terms of the
21 conversation that I had with Dan Cohen.

22 BY MR. ROLLIN:

23 Q. In the first cell, the first line, is there a pricing
24 analysis of the A-2 bond at that time?

25 A. So just to give context, this rule 19 is an entry. If you

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1 go to Page 3, the user who made this entry is Chen Chen. He's
2 one of the analysts that works for me in our group, and so
3 these are his comments. And so I would be reading what he's
4 saying, but I believe the second language is that the current
5 market level, we think the bond is worth around ML 30 cents to
6 mid to low 30s, as I believe his estimate of -- based on our
7 collateral analysis, combined with our analysis and structure,
8 his best guess, for where if we were to try to sell the bond,
9 what the price would be. But that's his estimate of market
10 price.

11 Q. Now, if you look at the second cell, where it says the
12 sentence that begins "In the case that 1-A-2 is made senior to
13 1-A-3," is that a pricing analysis as to what would happen in
14 the event that the indenture loss allocation priority is
15 reversed?

16 A. So rule 20, again, is an entry by Chen Chen, and so again
17 I'm integrating what he meant. I think what he's referring to
18 is, as I mentioned before, the two goalposts, where we run the
19 bond under the two various outcomes of 1-A-2 being either
20 senior or junior.

21 And what that's saying is when the 1-A-2 being senior
22 to the 1-A-3, the price or the value of the 1-A-3 will drop
23 from mid to low 60s -- ML stands for mid to low -- 60s to
24 mid-teens, and that is his analysis of those two prices.
25 That's not an analysis of the market price. That's just what

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1 the two extreme outcomes are.

2 And again, as I mentioned, that's part of our
3 analysis, where for both the 1-A-2 and the 1-A-3, we would look
4 at what do those bonds worth in those two extreme bond cases.

5 Q. And this says what would happen -- this shows the decrease
6 in the value of the 1-A-3, but what would be the corresponding
7 increase in the value of the 1-A-2 in the event of reversal?

8 MR. PICKHARDT: Objection, foundation.

9 THE COURT: Overruled.

10 A. So if you read the line that says the value of the 1-A-3
11 will develop below 60 to low teens, around -- around 7 million
12 transfer of value from 1-A-3 to 1-A-2. So by definition, once
13 you determine the underlying collateral value and collateral
14 assumptions, at that point, the only variable is where that
15 value goes.

16 And so what this comment is saying is that if you run
17 the two various -- if you run the two scenarios with 1-A-2
18 being senior or 1-A-3 being senior, the difference in those two
19 boundary conditions is 7 million. And so the if the 1-A-3
20 loses, the 1-A-2 gains, and the other way around.

21 Q. I understand this increase, the transfer of \$7 million in
22 value from the 1-A-3 to the 1-A-2. What I'm asking about is
23 the price. If it was -- if the 1-A-2 was in the mid to low 30s
24 at the time, then based on the information available here, what
25 would be the new price of the 1-A-2 in the event of a reversal?

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1 THE COURT: He says that there's a 7 million value to
2 switching priorities, right?

3 MR. ROLLIN: Yes.

4 THE WITNESS: Correct, your Honor.

5 MR. ROLLIN: I was asking a slightly -- so that your
6 Honor knows, I was asking just what the price would be
7 measured, using the same units of measurement in terms of
8 percentage of face value.

9 A. So I don't have the current face at that point in time, but
10 if you take that 7 million and divide it by the current face of
11 the entire 1-A-2 bond, that would be the difference in price
12 between those two scenarios.

13 Again, just to clarify, this is not the change in
14 market price. This is just -- because, again, I think most
15 investors or prudent investors would look at those two
16 outcomes, and then the market price would be a level in between
17 those two goalposts. And so this is just stating what those
18 two goalposts are, which is 7 million in value, in market value
19 terms. If you divide that 7 million by the current face of the
20 1-A-2, you'll get the difference in price terms. If you divide
21 it by the current face of the 1-A-3, you will get the
22 difference in price terms for the 1-A-3.

23 (Continued on next page)
24
25

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Mago - direct

1 Q. Point of clarification. In the first line of cell 19, it
2 says at the end of the sentence, PSA. Does that mean indenture
3 in this case?

4 A. Correct, we used that interchangeably.

5 Q. Ordinarily PSA, is that employee servicing agreement?

6 A. That is correct.

7 Q. What is your most recent price observation for the 1-A-2
8 class of notes?

9 THE COURT: On what assumption? Do you have to know
10 the assumption before you get the price?

11 THE WITNESS: I believe what he is asking, when we
12 last observed the market price, is that the question?

13 MR. ROLLIN: That is the question.

14 THE COURT: When did you last observe a market price
15 on the 1-A-2 notes?

16 THE WITNESS: The last observed market price would be
17 our last purchase, which I believe was in March of 2014 where
18 we got our last purchase.

19 BY MR. ROLLIN:

20 Q. That was about 45?

21 A. In that context.

22 THE COURT: 44.688.

23 MR. ROLLIN: Thank you.

24 BY MR. ROLLIN:

25 Q. Does that mean the A-2 notes have appreciated in value

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Mago - direct

1 since the first purchase until your most recent price
2 observation?

3 A. That means yes, they are willing to pay more than what we
4 paid more in January 2012. Again we don't have information
5 what somebody else would pay for the bonds. In general, the
6 market for non-agency securities has appreciated over that time
7 period.

8 THE COURT: The entire market?

9 THE WITNESS: That's correct, your Honor.

10 BY MR. ROLLIN:

11 Q. In December of 2013 when you made the purchase for 42.6488,
12 was there a second-best bid at the time?

13 A. Yes, I believe so.

14 Q. Does that referred to sometimes as a cover?

15 A. That's correct.

16 Q. What was the cover?

17 MR. PICKHARDT: Objection; hearsay.

18 A. I don't recall.

19 THE COURT: Overruled.

20 A. I don't recall an exact cover.

21 THE COURT: What is a cover?

22 THE WITNESS: A cover is the second-best price in an
23 auction. So, for example, it would be in the final bond that
24 42, the cover is the next best paid behind us, and so the
25 purchase that we made in December was a part of the process

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Mago - direct

1 which is that auction process I said before.

2 We were high bid and we bought the bonds. There were
3 a number of other bidders. By that time there is always a
4 cover. I don't have that cover price handy.

5 BY MR. ROLLIN:

6 Q. Did you know at one time, but you just don't remember what
7 it is now?

8 A. Yes, we would have known it at that time. Typically any
9 buyer, you get the cover information.

10 Q. Is there anything in Exhibit BN that would refresh your
11 recollection about the cover?

12 A. Not as it relates to the December purchase.

13 Q. Do you know who covered the bond?

14 A. I am sorry. Is the question what dealer was the cover?

15 Q. Do you know who the purchaser, the bidder was that provided
16 that second best offer?

17 A. No, that is not information that is available in the
18 marketplace.

19 MR. ROLLIN: You can take down that exhibit. Thank
20 you.

21 BY MR. ROLLIN:

22 Q. You mentioned a tool earlier called Intex, correct?

23 A. Correct.

24 Q. Is Intex a tool you use in your work?

25 THE COURT: He already said so.

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Mago - direct

1 MR. ROLLIN: TX-254, please.

2 MR. ROLLIN: May I approach with the exhibit, your
3 Honor?

4 THE COURT: Yes.

5 (Pause)

6 BY MR. ROLLIN:

7 Q. Mr. Mago I have placed before you TX-254. Do you recognize
8 that document?

9 A. I do.

10 Q. What is that document?

11 A. This is a screen-shot from the Intex application for the
12 AHMIT 2005-2 deal.

13 Q. Did you produce this screen-shot?

14 A. Meaning?

15 Q. Did you take this screen-shot?

16 THE COURT: Did you use this information on this
17 screen-shot in your analysis?

18 THE WITNESS: We did, your Honor.

19 MR. ROLLIN: I move the admission of TX-254.

20 MR. PICKHARDT: No objection, your Honor.

21 THE COURT: Received.

22 (Defendant Exhibit TX-254 received in evidence)

23 THE COURT: How is this going to help me, Mr. Rollin?

24 MR. ROLLIN: If you give me just a moment, your Honor,
25 I think you'll see this document from Intex shows Intex has to

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Mago - direct

1 perform a fix in its cash flow model to show that the indenture
2 governed the allocation of realized losses.

3 THE COURT: He said in the testimony that he took a
4 best-case analysis and took a worst-case analysis. By the
5 1-A-2 notes, he took best-case analysis to see what would be
6 its value if it had priority. He did a worst-case analysis to
7 see what its value would be if it didn't have priority. You
8 are just pounding the obvious.

9 MR. ROLLIN: It is a slightly different point, if I
10 may inquire?

11 THE COURT: You may inquire. It is not going to help
12 you.

13 BY MR. ROLLIN:

14 Q. Is the default in Intex toggled to the indenture?

15 THE COURT: Do you know what he means?

16 THE WITNESS: Yes.

17 THE COURT: Don't guess if you don't know what.

18 A. What do you mean?

19 Q. When you run the bond on Intex, pull up this sheet TX-254,
20 it is preset to indenture, and if you want to look at ProSupp
21 you have to toggle up to --

22 THE COURT: What is the difference? It is a computer
23 design.

24 MR. ROLLIN: Intex recognizes, and this is what the
25 market views that the indenture --

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Mago - direct

1 THE COURT: Objection?

2 MR. PICKHARDT: Yes, your Honor.

3 THE COURT: Sustained.

4 BY MR. ROLLIN:

5 Q. Was there a change in Intex based on your observation as to
6 the way it modeled the cash flows?

7 THE COURT: Who created the model? Who created the
8 application Intex?

9 THE WITNESS: An independent, third-party company.

10 THE COURT: You are not getting anywhere with it.

11 MR. ROLLIN: Very well, your Honor.

12 BY MR. ROLLIN:

13 Q. Did you view the screen that is TX-254 before you made the
14 first purchase?

15 A. Yes, we viewed the screen.

16 MR. ROLLIN: Would you take that down. Thank you.

17 THE COURT: Is that how you used that document?

18 MR. ROLLIN: I believe that is how your Honor has let
19 me use that document. I'll make argument based on its contents
20 now that it is in evidence.

21 THE COURT: It has no value. You can make whatever
22 arguments you want, but it has no value. That is how the Intex
23 is set. It has to be set on various assumptions. Apparently,
24 the assumption used was to follow the indenture. It has no
25 value.

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Mago - direct

1 BY MR. ROLLIN:

2 Q. Is the Intex data available to market participants based on
3 what you've seen?

4 A. Is the Intex application available with --

5 Q. Yes?

6 A. You need to be a subscriber once you are --

7 Q. So somebody who was -- is it true somebody who was?

8 THE COURT: Anybody who bought the app and was
9 entitled to use it would find the app, and that was what it
10 showed. It is based on an assumption of the indenture being
11 controlled. I have it.

12 MR. ROLLIN: TX-244, please.

13 MR. ROLLIN: May I approach with 244?

14 THE COURT: Did you ever read the indenture?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: You read the ProSupp?

17 THE WITNESS: Yes.

18 THE COURT: How do you get the indenture?

19 THE WITNESS: Typically, one needs to go to where the
20 indentures are filed.

21 THE COURT: You take it off the web page?

22 THE WITNESS: Correct. It is a little bit of an
23 exercise to find where it is available.

24 THE COURT: Sorry?

25 THE WITNESS: It is not easy to find always, but it is

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Mago - direct

1 generally available there.

2 THE COURT: Theoretically, it should be available?

3 THE WITNESS: Theoretically. It is not always
4 available. I am not sure why, but I would say 90 percent of
5 the case you can find it.

6 THE COURT: 90 percent, it is available?

7 THE WITNESS: Correct.

8 THE COURT: Okay.

9 BY MR. ROLLIN:

10 Q. When you run this bond on Blumberg, is the indenture linked
11 right there on the screen?

12 A. For this particular one, Blumberg has the indenture.

13 Q. You just click on that link, and it opens the indenture,
14 right?

15 A. For this bond, correct.

16 Q. You have access to that?

17 A. Yes.

18 Q. Is that what you did?

19 THE COURT: How did you note the discrepancy with the
20 ProSupp?

21 THE WITNESS: The process, your Honor, was, in that
22 instance we -- I don't think we have talked about this -- we
23 talked about it at deposition. We had an over sheet called a
24 lookout sheet. Given that there are thousands of years in the
25 non-agency universe, whenever there is some nonstandard

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Mago - direct

1 language or something to be careful about, we maintain an
2 internal sheet called the lookout sheet. That gets populated
3 by various analysts that work in my group and occasionally by
4 me.

5 For this particular deal, there was a Moody's report,
6 a rating agency report I believe in the beginning of 2011 which
7 listed this deal amongst others as having conflicting language
8 between the indenture and the ProSupp.

9 Our analysts looked at that report and then entered it
10 into the lookout sheet. That lookout sheet gets pulled in as
11 one of the main things we look at when we look at a bond. When
12 we first looked at it in January 2012, the bond was in the
13 lookout sheet, and so we noticed the discrepancy.

14 There was also the price snapshot on the prior
15 exhibit, Exhibit 254, which is a snapshot which highlighted the
16 discrepancy, and there is another screen-shot in Intex where
17 you use puts as options which has the toggles to switch the
18 order of priority. We noticed all of that.

19 We noticed other things that are convention of the
20 bonds and the coupon of the bonds when the deal is priced which
21 then told us that we need to do more work on that issue. That
22 then prompted us to go and look at the indenture.

23 THE COURT: Does the existence of a discrepancy like
24 this add to the risks of an investment?

25 THE WITNESS: It does.

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Mago - direct

1 THE COURT: Depending on the price, does it a also
2 enhance the potential rewards of an investment?

3 THE WITNESS: Yes, it does.

4 THE COURT: So it is important to understand as best
5 you can all the potential upside and all the potential downside
6 of an investment like this?

7 THE WITNESS: Correct.

8 THE COURT: Which is the purpose of your analysis?

9 THE WITNESS: Correct.

10 THE COURT: If the price is above or below a certain
11 point, that may add to the opportunities or detract from the
12 opportunities?

13 THE WITNESS: That's correct.

14 THE COURT: Add to the risk or reduce the risk?

15 THE WITNESS: Correct.

16 THE COURT: It is all a function of price?

17 THE WITNESS: Correct.

18 BY MR. ROLLIN:

19 Q. You mentioned a Moody's press release I think a moment ago?

20 A. There is a Moody's report which is different from this
21 Exhibit 244. It even has the same information.

22 Q. Did you see the information from Moody's prior to making
23 the purchase?

24 A. Yes, we did.

25 Q. Did you see the press release that is Exhibit 244 in front

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Mago - direct

1 of you?

2 A. No, we did not look at the press release, but the relevant
3 information here -- give me a second to review it.

4 (Pause) So under, if you look at Exhibit 244 under
5 "Ratings Rationale," the first paragraph, that information was
6 also available in that Moody's report that was published in
7 2011. That is something that we had looked at which then made
8 its way to our lookout sheet, and so we had access to this
9 information before we purchased the bond.

10 Q. That includes the sentence that is three from the bottom
11 that says, "The trustee has confirmed that they will be
12 following the PSA"?

13 A. I don't recall. I am not a hundred percent sure it had
14 that sentence.

15 Q. Are there any other sentences in here that you think may or
16 may not have been what you looked at from Moody's?

17 A. I don't recall the exact language. We can pull up that
18 report and see what exactly it says, but I do recall and know
19 that that report noted the discrepancy.

20 So, for example, I don't know if it said it in these
21 exact lines, but it said from the fourth line realized losses
22 with respect to the mortgage bonds and reallocated to 1-A-3 and
23 other -- that basic content was also in that Moody's report and
24 was made us aware of the discrepancy. I am not sure of the
25 exact language.

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Mago - direct

1 Q. Did you have calls with the trustee?

2 A. As I mentioned, after we purchased the bond, we had a
3 conversation with the trustee.

4 Q. That was after your purchase, your first purchase, but the
5 second two purchases had not happened yet. Is that right?

6 A. That's correct.

7 Q. Did the trustee tell you they were going to follow the
8 indenture?

9 A. As I mentioned previously, the discussion was that as per
10 the reading of the documents, the only way that they ordered
11 amendment was possible was with a consent.

12 I don't believe there was any discussion of what
13 future steps they would follow or how it would evolve, but
14 there was more discussion about what the documents said
15 around --

16 Q. Did you make any purchases after you already knew that a
17 consent solicitation had failed?

18 A. Yes.

19 MR. PICKHARDT: Objection, your Honor.

20 THE COURT: Objection sustained.

21 BY MR. ROLLIN:

22 Q. Did you come to learn at some point that Wells Fargo sent a
23 consent solicitation for reversal of the loss allocation
24 priority?

25 MR. PICKHARDT: Objection, your Honor.

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Mago - direct

1 THE COURT: Overruled.

2 THE WITNESS: Can you repeat the question.

3 THE COURT: Did you come to know if there had been
4 some solicitation by the trustee to all note-holders to consent
5 to the amendment?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: When did you find that out? When did you
8 learn that?

9 THE WITNESS: I don't recall the exact date, but it
10 was, I believe, after -- probably after the consent
11 solicitation had been sent out and after it failed.

12 THE COURT: Had you made all of your three purchases
13 by then?

14 THE WITNESS: No, your Honor. That happened sometime
15 in 2013, and so we had our first purchase, and the second and
16 third purchases had not happened until then.

17 BY MR. ROLLIN:

18 Q. Did the third purchase happen after this case was already
19 in litigation?

20 A. The third purchase happened in March, so I believe, yes,
21 March of 2014.

22 Q. Even though the consent solicitation failed, you made two
23 purchases anyway?

24 THE COURT: Let's not pound the obvious, please.

25 MR. ROLLIN: No further questions.

E78JTRU2

Mago - direct

1 THE COURT: Cross-examination.

2 MR. ROLLIN: I move the admission of 244.

3 THE COURT: 254.

4 MR. ROLLIN: 244 was the last one.

5 THE COURT: What was 244?

6 MR. PICKHARDT: Your Honor, may I approach?

7 THE COURT: One minute.

8 (Pause)

9 THE COURT: Did you analyze 244 as part of your due
10 diligence?

11 THE WITNESS: As I mentioned, your Honor, we didn't
12 look at 244.

13 THE COURT: You did not?

14 THE WITNESS: Correct, but we did look at the Moody's
15 report which essentially had similar information pointing out
16 the discrepancy.

17 THE COURT: What do you want to do?

18 MR. PICKHARDT: There is no objection from us.

19 THE COURT: Received.

20 (Defendant Exhibit TX-244 received in evidence)

21 MR. ROLLIN: For housekeeping, your Honor, do you have
22 254? I think we moved that in.

23 THE COURT: You did.

24 CROSS-EXAMINATION

25 BY MR. PICKHARDT:

E78JTRU2

Mago - cross

1 Q. Good morning, Mr. Mago.

2 Mr. Mago, you were asked some questions about Intex
3 and you were shown one screen out of the Intex application,
4 correct?

5 A. That's correct.

6 Q. Are there other screens within the Intex application that
7 you reviewed or relied upon in connection with your investment
8 decisions?

9 A. We did.

10 Q. I have put in front of you three exhibits which are labeled
11 as Exhibits TX-255, TX-256 and TX-257.

12 THE COURT: He already said he toggled both ways, he
13 looked for maximum upside and maximum downside.

14 MR. PICKHARDT: The only reason we want to put these
15 in evidence --

16 THE COURT: Why?

17 MR. PICKHARDT: We don't --

18 THE COURT: Why? I know. I already learned.

19 MR. PICKHARDT: What these exhibits include is some of
20 the texts that Intex provides to the marketplace describing the
21 discrepancy.

22 THE COURT: Why should I care?

23 MR. PICKHARDT: Your Honor, we are going to hear from
24 a witness that they were unaware of this information. This is
25 the information that is available through the prevalent

E78JTRU2

Mago - cross

1 application. We to think it is going to be relevant for a
2 future witness. Again, we are not intending to belabor --

3 THE COURT: Make sure your witness can put it in. It
4 is also outside the scope of the direct. I think it is okay.

5 Do it.

6 BY MR. PICKHARDT:

7 Q. Mr. Mago, are each of the screens reflected in Exhibits
8 TX-255, TX-256 and TX-257 screens that you reviewed in
9 connection with your purchases of the 1-A-2 bonds?

10 A. Yes.

11 Q. Do these screens reflect the toggle -- strike that.

12 Does TX-255 and TX-256 reflect the toggle between the
13 ProSupp and the indenture that you described?

14 A. It does.

15 Q. Does TX-257 include notes that are available to investors
16 to review if they are looking at a potential investment in
17 1-A-2 or 1-A-3 bonds?

18 MR. ROLLIN: Objection; calls for speculation, lacks
19 foundation and relevance.

20 THE COURT: Overruled. One word, it is "objection."

21 THE WITNESS: Yes.

22 MR. PICKHARDT: Your Honor, at this time I would move
23 to admit Exhibits TX-255, TX-256 and TX-257.

24 THE COURT: Received.

25 (Plaintiff Exhibits TX-255, TX-256 and TX-257 received

E78JTRU2

Mago - cross

1 in evidence)

2 BY MR. PICKHARDT:

3 Q. Mr. Mago, how prevalent is Intex in your industry?

4 MR. ROLLIN: Objection, foundation -- objection.

5 THE COURT: Overruled.

6 A. Again it is the market standard to participants. My guess
7 is 90 percent of participants have access, and that is the
8 primary force of analyzing structures.

9 BY MR. PICKHARDT:

10 Q. You were asked a question about when you first made an
11 investment in these securities, your consideration of risk
12 associated with the discrepancy. Do you recall that question?

13 A. Yes.

14 Q. You were asked a question about evaluating potential upside
15 and downside. Is that right?

16 A. Yes.

17 Q. I am not going to ask you the substance of your
18 communications, but can you tell me whether, prior to your
19 investment, did you consult a lawyer with respect to the fact
20 that there was a discrepancy between two transactional
21 documents?

22 A. Yes, we did.

23 Q. Is that part of what you used in consideration of your
24 assessment of the potential upside and downside of the
25 investment?

E78JTRU2

Mago - cross

1 A. Yes.

2 MR. PICKHARDT: I have no further questions.

3 THE COURT: Redirect?

4 MR. ROLLIN: Yes, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. ROLLIN:

7 Q. Mr. Mago, in assessing the investment, what legal advice
8 did you get?

9 MR. PICKHARDT: Objection, your Honor.

10 MR. ROLLIN: They have put it at issue. They have
11 opened the door by trying to use the receipt of legal advice.

12 THE COURT: Objection sustained.

13 BY MR. ROLLIN:

14 Q. Mr. Mago, do you know from your personal knowledge how any
15 other investors -- let me do it this way -- how all other
16 investors --

17 THE COURT: He didn't testify. He just knows what is
18 out there in Intex. That is all he said. That is all comes it
19 comes in for. What other people did or did not do he doesn't
20 know.

21 MR. ROLLIN: If that is all it comes in for, I have no
22 further questions.

23 THE COURT: Thank you.

24 (Witness excused)

25 THE COURT: Next witness. Would the attorneys please

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Mago - redirect

1 police the witness box. Take all the stuff away.

2 (Pause)

3 MS. BRASWELL: Your Honor, we would like to call Ms.
4 Davis to the stand.

5 RIA DAVIS,

6 called as a witness by the Defendants,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. BRASWELL:

10 Q. Ms. Davis, where are you currently employed?

11 A. I am employed at Semper Capital Management.

12 Q. Can you tell the court what your position is at Semper
13 Capital Management.

14 A. I am general counsel and chief compliance officer.

15 Q. Was Semper formerly known by any other name?

16 A. Semper has been known as Utendahl Capital Management, U T E
17 N D A H L, Capital Management, and then it was known as UCM
18 Partners, and then it changed its name to Semper Capital
19 Management in May of 2013.

20 Q. If I refer to Semper today as Semper Utendahl, UCM, you
21 know I am --

22 THE COURT: You can do whatever you want as long as we
23 understand the question.

24 BY MS. BRASWELL:

25 Q. So Semper Capital is Semper.

E78JTRU2

Davis - direct

1 Ms. Davis how long have you been employed by
2 Semper?

3 A. A little over seven years.

4 Q. Can you please describe your role as chief compliance
5 officer for Semper.

6 A. As chief compliance officer for Semper, one of my jobs is
7 to participate in analysis of the portfolio with respect to
8 risk in the portfolio as well as reviewing marketing materials
9 and publicly-available information about the firm.

10 Q. In that role, have you gained an understanding of Semper's
11 business decision-making process?

12 A. Yes, I have.

13 Q. Have you developed an understanding of how Semper operates
14 in the marketplace?

15 A. Yes, I have.

16 Q. Have you developed a general understanding of Semper's
17 investment strategies?

18 A. Yes, I have.

19 Q. On what basis have you developed that knowledge and
20 understanding?

21 A. I participate in regular business meetings with senior
22 management and with the portfolio team. I also do regular
23 reviews of the portfolio process, and we have weekly firm
24 meetings, marketing meetings and risk management meetings on
25 the portfolio and the investment process.

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Davis - direct

1 Q. Ms. Davis, can you please tell the Court a little bit about
2 what Semper is, what they do and how they manage their funds.

3 A. Semper is a registered investment advisor. It is
4 registered with the Securities & Exchange Commission. We
5 manage approximately \$1.1 billion in client assets in various
6 privately-placed funds, public mutual funds and institutional
7 separately managed accounts.

8 Q. Ms. Davis, without revealing any attorney-client privileged
9 communications can you please tell the court why Semper has
10 appeared as a party in interest in this case?

11 THE COURT: You dropped your voice at the end. Why
12 Semper?

13 MS. BRASWELL: Has appeared as a party of interest in
14 this case.

15 MS. SHAH: Objection.

16 THE COURT: What is the objection?

17 MS. SHAH: We don't think it is relevant, your Honor.
18 We believe this case has to do with --

19 THE COURT: You are not challenging its standing?

20 MS. SHAH: No. It is just objectionable on its terms.

21 THE COURT: Sustained. It is a real party in
22 interest, and it is obvious it is acting on behalf of its
23 clients because of it's legal title to the investment.

24 BY MS. BRASWELL:

25 Q. Ms. Davis, can you tell the court about who your clients

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Davis - direct

1 are and their relative interests in this litigation.

2 MS. SHAH: Objection.

3 THE COURT: The same objection. The client is Semper.
4 Semper has beneficial interest in others that it must pay
5 attention to. Let's move on to another point.

6 MS. BRASWELL: I understand.

7 BY MS. BRASWELL:

8 Q. Ms. Davis, I would like to ask you questions about this
9 case. If I refer to AHMIT 2005-2, you know I am referring to
10 the trust at issue in this case?

11 THE COURT: Just ask questions, please.

12 MS. BRASWELL: Yes, your Honor.

13 BY MS. BRASWELL:

14 Q. When did you first become involved with respect to AHMIT
15 2005-2, Ms. Davis?

16 A. In May of 2013.

17 Q. What prompted that involvement?

18 A. We received a request from Wells Fargo, the securities
19 administrator, for the firm to consent to the amendment of the
20 indenture.

21 MS. BRASWELL: I would like show TX-005, please. I
22 approach the witness, your Honor?

23 THE COURT: Yes.

24 (Pause)

25 BY MS. BRASWELL:

E78JTRU2

Davis - direct

1 Q. Ms. Davis, is this the consent solicitation you referred to
2 a moment ago?

3 A. Yes, it is.

4 Q. Do you recall receiving this on or around May 10th, 2013?

5 A. Yes, I do.

6 Q. When you received it, did you read it?

7 A. Yes, I did.

8 Q. What did you understand this consent solicitation to mean
9 for Semper?

10 A. It meant that Semper was being asked as a holder of the
11 Class 1-A-3 note to consent to an amendment of the indenture
12 that would switch the allocation of realized losses from the
13 1-A-2 notes first to the 1-A-3 notes which were held in one of
14 our client funds, the Midas Fund.

15 Q. Do you know how Semper responded to this consent
16 solicitation?

17 A. I do.

18 Q. How did Semper respond to the consent solicitation?

19 A. We refused to provide our consent.

20 Q. Why did you refuse to provide consent?

21 A. That would be not in the best interests of our clients. We
22 are a fiduciary for our clients. As a registered investment
23 advisor, we have an obligation to do what is in the best
24 interests of our clients. We felt having the realized losses
25 switched from the Class A-2 notes to the Class A-3 notes which

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Davis - direct

1 are held by our investors would not be in their best interests.

2 Q. How did you communicate to Wells Fargo your refusal to
3 consent to this amendment?

4 A. We submitted back the consent form along with our
5 beneficial holder certificate and we also attached a letter
6 expressing our refusal to provide consent.

7 MS. BRASWELL: Can you please show TX-006. May I
8 approach, your Honor?

9 THE COURT: Yes.

10 (Pause)

11 BY MS. BRASWELL:

12 Q. Ms. Davis, do you recognize TX-6?

13 A. Yes, I do.

14 Q. Can you describe what it is.

15 A. This is a cover e-mail from our president and chief
16 operating officer to Wells Fargo, the securities administrator,
17 submitting our consent form and the attached letter.

18 Q. Can you turn to the attached letter on Page 4 of this
19 exhibit.

20 A. Yes.

21 Q. Do you recognize this letter?

22 A. I do.

23 Q. Did you have a role in drafting this letter?

24 A. I was the primary drafter of this letter.

25 MS. BRASWELL: I would like to move for the admission

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Davis - direct

1 of TX-6 and also TX-5 previously shown to the witness.

2 THE COURT: Without objection, received.

3 (Defendant Exhibit TX-6 and TX-5 received in evidence)

4 BY MS. BRASWELL:

5 Q. Ms. Davis, can we look to the second page of the letter
6 which is TX-5?

7 THE COURT: Is there anything more you want to bring
8 out that Semper refused consent?

9 MS. BRASWELL: Is there something your Honor would
10 like to hear?

11 THE COURT: No, no. I already captured that
12 information. You refused consent?

13 MS. BRASWELL: I understand. I believe this letter,
14 your Honor, provides information about not only Semper's
15 position with respect to the consent solicitation, but also the
16 assurances that were made to Semper by Wells Fargo, and Ms.
17 Davis has personal knowledge about that information and --

18 THE COURT: Just ask her. Just ask her.

19 MS. SHAH: We object to the line of questioning. We
20 don't believe it is relevant. Relevance!

21 THE COURT: Overruled. Ask her. The letter is
22 hearsay. You can ask her.

23 MS. BRASWELL: I will ask her about the contents of
24 the letter.

25 THE COURT: No. Ask her about conversation that is

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Davis - direct

1 reported in the letter.

2 MS. BRASWELL: I understand. I will ask her about the
3 conversation that was reported in the letter.

4 THE COURT: Did you have a conversation with someone
5 at the trustee?

6 THE WITNESS: No, I never had a conversation with
7 anyone at Deutsche Bank.

8 THE COURT: Or the administrator?

9 THE WITNESS: No. I reviewed the communications
10 between the administrator and our portfolio manager.

11 MS. BRASWELL: Your Honor, may I explain why I believe
12 this testimony is helpful? I understand you're seeking --

13 THE COURT: Tell me why it is admissible.

14 MS. BRASWELL: Part of the response that Wells Fargo
15 and Sceptre have made to our affirmative defenses is that
16 Semper has essentially held these notes and also purchased
17 these notes knowingly and assumed the risk of Sceptre's
18 arbitrage.

19 The state of mind of Semper's employees and the
20 knowledge they had when they received the consent solicitation
21 from Wells Fargo and responded to that consent solicitation
22 bears directly on those responses and on this concept that we
23 somehow knowingly assumed the risk of Sceptre's arbitrage.

24 MS. SHAH: We object to this on relevance --

25 THE COURT: I can't hear you. You must speak louder.

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Davis - direct

1 MS. SHAH: I object on relevance again, and she
2 testified she wasn't a party to those conversations. We
3 don't --

4 MS. BRASWELL: This is not about the conversations,
5 but again about the state of mind and the knowledge in Semper's
6 mind by and through its employees, including Ms. Davis.

7 THE COURT: The knowledge and state of mind of the
8 chief compliance officer doesn't count. It is the person who
9 made the investment that counts.

10 MS. BRASWELL: You certainly --

11 THE COURT: You know what? Just do it. Objection
12 overruled. Just do it.

13 BY MS. BRASWELL:

14 Q. Ms. Davis, on Page 5 of the letter --

15 THE COURT: What is the exhibit?

16 MS. BRASWELL: TX-6.

17 Q. -- in the last paragraph of your letter, Ms. Davis, you
18 state:

19 "Based on this due diligence, UCM proceeded to acquire
20 \$26 million original face amount of the Class 3 notes for the
21 fund's portfolio, and based on the assurances from Wells Fargo,
22 UCM has continued to hold the Class 3 notes in the fund
23 portfolio."

24 Can you explain what you meant by that?

25 THE COURT: Do you know how much there is in that last

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Davis - direct

1 statement?

2 MS. BRASWELL: To the statement?

3 THE COURT: It is completely hearsay and has zero
4 value, but let's do it.

5 BY MS. BRASWELL:

6 Q. What did you mean by the statement Wells Fargo had provided
7 Semper with assurances?

8 THE COURT: What? How is it important what her
9 private meeting is? She said it, that is all that counts.
10 That is the communication, what she wrote in the letter.

11 What she thought is of no value. It is not
12 admissible. Is there an objection?

13 MS. SHAH: Yes, your Honor.

14 THE COURT: Sustained.

15 BY MS. BRASWELL:

16 Q. Ms. Davis, did Wells Fargo ever tell Semper that it would
17 not file litigation?

18 THE COURT: Would not what?

19 MS. BRASWELL: File litigation.

20 A. No, it never said it wouldn't file litigation.

21 BY MS. BRASWELL:

22 Q. Did it ever say that it would file a legal action?

23 A. No. What it told us was was the only way to amend the
24 indenture was with the consent of all of the note-holders. We
25 knew we would never consent, so we knew that wasn't a

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Davis - direct

1 possibility.

2 Q. Without disclosing attorney-client communications, can you
3 tell the court what Semper's purpose was in sending this letter
4 to Wells Fargo?

5 MS. SHAH: Objection, your Honor.

6 THE COURT: Sustained.

7 BY MS. BRASWELL:

8 Q. Ms. Davis, did you communicate with Wells Fargo any
9 information concerning Semper's view on how an amendment to the
10 indenture could affect market pricing?

11 MS. SHAH: Objection, your Honor.

12 THE COURT: Sustained.

13 BY MS. BRASWELL:

14 Q. Ms. Davis, do you have knowledge whether Semper held its
15 notes in reliance on Wells Fargo's assurances?

16 MS. SHAH: Objection, your Honor.

17 THE COURT: Sustained.

18 BY MS. BRASWELL:

19 Q. What happened after Semper sent this letter to Wells Fargo?

20 A. Wells Fargo sent a letter back to us saying that we should
21 not interpret their reservation of rights to mean that they
22 would take any litigation or they wouldn't pursue litigation.

23 MS. BRASWELL: May we show TX-7, please. May I
24 approach, your Honor?

25 THE COURT: Yes. (Pause) Ms. Davis sees it on the

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Davis - direct

1 screen. You don't have to give it on paper.

2 MS. BRASWELL: It is multiple pages. I am not sure
3 she can see the entire document.

4 BY MS. BRASWELL:

5 Q. Ms. Davis, do you recall receiving this letter on or around
6 the time it was sent?

7 A. Yes, I do.

8 Q. Did you read the letter?

9 A. Yes, I did.

10 Q. Do you have an understanding whether Wells Fargo reserved
11 their rights in this letter?

12 THE COURT: The letter is what it is. It is being
13 offered in evidence and it is not objected to.

14 MS. SHAH: It is already in evidence, actually.

15 THE COURT: It is already in evidence? I'll read it.

16 MS. BRASWELL: Your Honor, wells Fargo and Sceptre
17 have argued in this case their reservation of rights was
18 sufficient to put Semper on notice they were going to file this
19 litigation and essentially Semper was acting improperly by
20 continuing to hold its notes knowing that --

21 THE COURT: What relevance is that to anything?

22 People sue if they want to sue and don't sue if they
23 don't want to sue. Other people do what they want to do. It
24 is a free country.

25 MS. BRASWELL: Right, but they are using that

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Davis - direct

1 information to show that we somehow acted improperly, and
2 this --

3 THE COURT: Why did you act improperly?

4 MS. BRASWELL: That is our question. We don't believe
5 we did.

6 MR. PICKHARDT: We are not suggesting they acted
7 improperly. The only thing we are suggesting is they made an
8 investment decision to hold their notes. The court can
9 observe, and they continued to hold their notes after, as Ms.
10 Davis has confirmed, they had information from the trustee the
11 trustee might file litigation. That is the only point.

12 THE COURT: That is enough. Okay. What else am I
13 going to learn out of this witness?

14 BY MS. BRASWELL:

15 Q. Did Semper have an expectation one way or another --

16 THE COURT: Excuse me. Mr. Pickhardt, Ms. Shah may
17 want to object to the question. She can't object when --

18 MS. SHAH: Objection, your Honor.

19 MS. BRASWELL: I haven't finished the question, your
20 Honor.

21 THE COURT: The objection to what?

22 BY MS. BRASWELL:

23 Q. Ms. Davis --

24 THE COURT: She is objecting to Mr. Pickhardt filling
25 her ear while --

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Davis - direct

1 MR. PICKHARDT: I assume that is sustained, your
2 Honor.

3 MS. BRASWELL: May try again?

4 THE COURT: Sure.

5 BY MS. BRASWELL:

6 Q. Ms. Davis, did Semper have an expectation one way or
7 another as to whether Wells Fargo would ever provide Semper
8 with notice of filing a litigation prior to filing that
9 litigation?

10 MS. SHAH: Objection, your Honor.

11 THE COURT: Sustained. I think the value of Ms.
12 Davis' testimony has already been had. There is nothing more
13 here.

14 BY MS. BRASWELL:

15 Q. Ms. Davis, will reformation inflict harm on Semper?

16 MS. SHAH: Objection.

17 THE COURT: It clearly will. It will benefit one
18 party and will harm another party. The last witness testified
19 to the \$7 million of value on the switch.

20 MS. BRASWELL: I understand.

21 THE COURT: I think we are finished. Thank you very
22 much, Ms. Davis.

23 MS. SHAH: We just have a few questions.

24 THE COURT: You don't have any questions, okay?

25 (Witness excused)

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Davis - direct

1 THE COURT: Next witness.

2 MR. ROLLIN: Your Honor, our next witness will be Dan
3 Cohen, who is the corporate representative for Wells Fargo, and
4 that will be by deposition reading.

5 THE COURT: Okay.

6 MR. ROLLIN: Ms. Braswell will read for Mr. Cohen.
7 Will that be all right?

8 THE COURT: Yes, that will be all right.

9 MR. ROLLIN: I have a copy of the transcript for
10 yourself.

11 THE COURT: Excellent!

12 MR. ROLLIN:

13 "Q Why don't you tell us a little bit about your job. What
14 do you do for Wells Fargo?

15 "A I am a default and restructuring account manager, so we
16 handle defaulted situations with corporate trusts, trusts. I
17 support all product lines in the company, mortgage-backed
18 securities, asset-backed securities, these transactions, any
19 kind of corporate trust transaction that we have when there is
20 a defaulted situation, it can be a party default, it can be a
21 litigation with a matter, could be a party goes bankrupt, it
22 could be a legal question about the deal documents. They'll
23 call us in and we help work with counsel and coordinator with
24 our potential operational group to help manage the matter."

25 THE COURT: It is too hard, too hard for me to observe

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"Cohen

1 and too hard for Jerry to take it down. Please slow down.

2 MR. ROLLIN: Your Honor, one point. We have cut as
3 much as we felt we could from the transcript that your Honor
4 has and counsel have. Therefore, we will skip over some
5 portions, but I will orient the courtroom to the next line,
6 okay?

7 THE COURT: Yes. I do not mind you skipping.

8 MR. ROLLIN: I understood that well yesterday, your
9 Honor.

10 MR. ROLLIN: Continuing on the next page, Page 13 Line
11 10 through 13:

12 "A I give my input to what they say and mean, but as I said,
13 we do usually in these situations pretty much always bring in
14 our counsel as well."

15 MS. SHAH: Objection. I ask the preceding question be
16 read into the record as well.

17 MR. ROLLIN: I will be happy to. I should have done
18 it:

19 "Q And you report back to the various business units at Wells
20 Fargo about what the various deal documents say and mean,
21 right?"

22 THE COURT: We have the answer. Continue.

23 BY MR. ROLLIN:

24 "Q Now, you're designated to testify here as a representative
25 of Wells Fargo, right?

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"Cohen

1 "A Yes.

2 "Q So you understand that you're binding Wells Fargo with
3 your answers, right?"

4 MR. JOHNSON: Objection.

5 THE COURT: Overruled.

6 "A Yes.

7 Q. Next line was do you understand that?

8 "A Yes.

9 "Q But you also happen to have played a personal role in this
10 matter over the course of this last number of years, right?

11 "A I was involved in the situation in analyzing the documents
12 and consulting with counsel, yes.

13 "Q So you have personal knowledge as to the events leading up
14 to today, don't you?

15 "A I would say I have some personal knowledge.

16 "Q However, Wells Fargo has had a copy of the indenture since
17 the first day it was executed, right?

18 "A I would say that's a fair statement.

19 "Q Since June of 2005, somewhere in Wells Fargo there have
20 been one if not many copies of this indenture. Do you agree?

21 "A I would say Wells Fargo had possession of the indenture.

22 "Q So Wells Fargo could have looked at the indenture at any
23 time since June 2005 and found out that the loss allocation was
24 set up such that the A-2 bears" --

25 THE COURT: This is argumentative and it won't add to

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"Cohen

1 anything.

2 MR. ROLLIN: I'll skip to the next question concerning
3 reading of the indenture. Page 40 line 11:

4 "Q And you certainly could have read it?"

5 MR. JOHNSON: Objection.

6 THE COURT: The objection is sustained. The objection
7 is sustained. One minute, Mr. Rollin.

8 MR. ROLLIN: Yes, your Honor.

9 (Pause)

10 THE COURT: Go to 44,2.

11 MR. ROLLIN:

12 "Q And was that the securities administrator's position that
13 what you ought to be doing is try to amend the indenture
14 without the consent of note-holders?

15 "A I think at that time, I think at first we were looking at
16 the provisions for amending without consent, and then after
17 further analysis we came to the conclusion that that was not
18 possible and that we would need the consent of affected
19 note-holders.

20 "Q And that decision was made in consultation with counsel,
21 correct?

22 "A Yes.

23 "Q Including counsel at Alston & Bird, right?

24 "A Yes.

25 "Q And you concluded you could not alter the allocation of

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"Cohen

1 realized losses without the" --

2 MS. SHAH: Objection, your Honor.

3 THE COURT: Overruled.

4 MR. ROLLIN:

5 "A Yes.

6 "Q What we do know is after consultation with the indenture
7 trustee, the owner trustee and counsel, including counsel for
8 at least the indenture trustee, the conclusion was reached that
9 you could not amend without consent of affected note-holders,
10 right?

11 "A That's a fair characterization. I would say we couldn't
12 amend under those amendment procedures. The amendment
13 procedures which called for amendment without consent, we
14 couldn't use those to amend without consent of the
15 note-holders.

16 "Q I show you what has been marked for identification as
17 TX-I. TX-I is a series of e-mails attaching a letter to ING,
18 correct?

19 "A Yes.

20 "Q Let's turn to the letter. The letter that we have
21 beginning on the page Bates marked 6592 is Wells Fargo's
22 response to ING Bank concerning its inquiry into the allocation
23 of losses under the indenture, right?

24 "A Yes."

25 MR. ROLLIN: I move the admission of TX-I, your Honor.

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1 MS. SHAH: No objection.

2 THE COURT: Received.

3 (Defendant Exhibit TX-I received in evidence)

4 MR. ROLLIN:

5 "Q And on the second page of the letter is a heading in bold
6 and underlined that says amending the indenture to resolve the
7 inconsistency, right?

8 "A Yes.

9 "Q Absent an amendment to the indenture, Wells Fargo will
10 allocate realized losses to the Class 1-A-2 and the Class 1-A-3
11 notes in the manner currently set forth in the indenture. Did
12 I read that correctly?

13 "A Yes.

14 "Q That's Wells Fargo's position?

15 "A At the time that's what we said.

16 "Q That was Wells Fargo's position at the time?

17 "A Yes.

18 "Q And then in the next paragraph it says" --

19 THE COURT: What is the date of this letter?

20 MR. ROLLIN: May 2, 2011, I believe, your Honor. Yes,
21 that's the date. May I proceed?

22 THE COURT: Yes.

23 MR. ROLLIN:

24 "Q And then in the next paragraph it says Wells Fargo
25 consulted with the indenture trustee, the owner trustee and

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1 outside counsel to explore whether an amendment to the
2 indenture without the consent of note-holders could be done to
3 rectify the inconsistency, and that happened, right?

4 "A Yes."

5 THE COURT: Mr. Rollin, please identify for me the
6 indenture trustee and the owner trustee.

7 MR. ROLLIN: The indenture trustee is Deutsche Bank
8 National Trust Company, and the owner trustee is at the time
9 was M&T. I don't know the full name. It is now I believe
10 Wilmington Trust Company.

11 THE COURT: M&T used to be a Buffalo bank, I think.

12 MR. ROLLIN: Sorry?

13 THE COURT: I think it was a Buffalo bank that was
14 swallowed up by Hong Kong, by Hong Kong and Shanghai, whatever
15 that name was.

16 MR. ROLLIN: I am not sure.

17 THE COURT: Anyway, what's the relationship between
18 the owner -- anybody can help me with this -- between the owner
19 trustee, indenture trustee and the administrator?

20 Wells Fargo is the administrator?

21 MR. JOHNSON: Securities administrator, your Honor.

22 THE COURT: What is the relationship between the
23 trustee and administrator?

24 MR. JOHNSON: I am not an expert on that.

25 THE COURT: You know more than I do, though.

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1 MR. JOHNSON: If that makes me an expert, I will take
2 the compliment. This is a debt structure, and in debt
3 structures there typically is an indentured trustee, and that
4 is a rule that was held here by Deutsche Bank.

5 In a non-debt deal, there would typically just be a
6 trustee, and the trustee would have the functions that are held
7 here by the securities administrator, that is, collecting the
8 funds each month and paying them out.

9 In this debt structure that we're talking about, the
10 indenture trustee has a much more limited role, so it does not
11 have that responsibility for collecting the funds and then
12 paying them out each month. That is the securities
13 administrator's job.

14 THE COURT: Why is this lawsuit brought by the
15 securities administrator rather than the trustee?

16 MR. JOHNSON: Your Honor, that is because ultimately
17 it will be the securities administrator's responsibility for
18 making payments to holders of the notes that are issued by the
19 issuer here, and it is also the securities administrator's
20 responsibility under this structure to allocate the losses, and
21 it is the allocation of losses in this structure that
22 ultimately has an impact on how much Wells Fargo, as securities
23 administrator, is paying out to holders of the note.

24 THE COURT: You avail yourself of a statute in
25 Minnesota where the trustee seeks guidance of the court to

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1 correct your problem.

2 MR. JOHNSON: That is true, but is a broad statute and
3 it is available to any interested parties. So that term has
4 been construed to allow a beneficiary of a trust to commence an
5 action if the beneficiary would be useful for court's guidance
6 as meaning of the trust instrument.

7 THE COURT: That is helpful. Tell me the difference
8 between the indenture trustee and owner trustee. The owner
9 trustee represents the bondholders?

10 MR. JOHNSON: No. The owner trustee I think actually
11 holds title to the assets. I am not positive. Others in the
12 room may be able to clarify that. It is fair to say -- and
13 other counsel should speak up if they disagree -- the owner
14 trustee really had virtually no role in this transaction at
15 least with respect to why we're here today.

16 THE COURT: They own the holding collateral.

17 MR. JOHNSON: I believe they hold title to the
18 collateral. The reasons for that I don't know.

19 THE COURT: Mr. Rollin, do you have any knowledge on
20 that?

21 MR. PICKHARDT: I don't have knowledge on owner
22 trustees. There have been owner trustees on other deals.

23 THE COURT: Mr. Rollin?

24 MR. ROLLIN: The same.

25 THE COURT: Sorry to interrupt.

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1 MR. ROLLIN:

2 "Q The consequence of those communications are in the very
3 next sentence. Such an amendment is not possible under these
4 circumstances.

5 "A That's what we said.

6 MR. ROLLIN: Picking up at 17,7, a few lines down:

7 "Q That was the outcome of those consultations with the
8 indenture trustee? The owner trustee?"

9 THE COURT: There is no answer till 71,15 which is,
10 "The conclusion an amendment without consent was not possible."

11 (Continued on next page)
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1 MR. ROLLIN: I'm at 71, 17. It just looks like the
2 printing job, your Honor, is unhelpful but --

3 THE COURT: That isn't helpful either.

4 MR. ROLLIN: Okay, 71, 17.

5 "Q. And here's what it goes on to say. It says: While some
6 RMBS transactions contain a provision allowing the parties to
7 amend an indenture or pooling and servicing agreement to
8 conform such agreement to the offering materials, the indenture
9 in the subject transaction does not contain such a provision.
10 The absence of such a provision in this case prevents the
11 parties from amending the indenture to conform to the Pro Supp.

12 That was your position, right?

13 "A. That's what it says.

14 "Q. And that was the product of your legal analysis?

15 "A. It was a product of talking with counsel, talking with the
16 trustees, reviewing the documents. That was our position.

17 "Q. You said a moment ago that was your position. That was
18 Wells Fargo's position, then, right?

19 "A. Well, yeah, that's -- that's what we wrote in the letter.

20 "Q. And then you go on to say in the next paragraph that you
21 could amend the indenture so long as you got one hundred
22 percent consent from the affected note holders?

23 "A. Yeah, it says, under 9.02, such an amendment would require
24 the consent of one hundred percent of the outstanding balance
25 of class 1-A-3 notes, in addition to the other requirements for

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1 amending.

2 "Q. And at the bottom of that same paragraph, it says:
3 Because the proposed change to the indenture would affect the
4 class 1-A-3 notes, their consent is required, right?

5 "A. Yes.

6 "Q. And that's true?

7 "A. I think that was -- that was the result of our analysis.
8 That was our conclusion.

9 "Q. So that's true?

10 "A. Yes, that's true.

11 "Q. Now, what you do is you provide ING an opportunity to do
12 something about this in the very last paragraph, and it says:
13 In order to solicit the consent of one hundred percent of the
14 outstanding principal balance of the class 1-A-3 notes, Wells
15 Fargo requires that ING, ii, provide a written direction to
16 Wells Fargo as securities administrator to solicit such
17 consent, and, i, agree in writing to pay the extensions
18 incurred by Wells Fargo and the expenses incurred by any other
19 necessary parties to a supplemental indenture entered into for
20 the purpose of amending the indenture with consent.

21 Did I read that correctly?

22 "A. Yes.

23 "Q. So you made that offer to ING?

24 "A. Yeah. We said if it would require those things for us to
25 solicit consent.

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1 "Q. And direction and indemnity is often preferred to as D&I,
2 correct? Can we say D&I today when we're talking about
3 direction and indemnity, as is set forth in this paragraph?

4 "A. Sure.

5 "Q. And did you get D&I from" -- I'm sorry.

6 "And did you not get D&I from ING?

7 "A. No.

8 "Q. And, therefore, you did not seek to change the loss
9 allocation prior in the indenture on behalf of ING?

10 "A. Not at this time.

11 "Q. Mr. Cohen, do you understand that in certain respects
12 indentures are governed by the Trust Indenture Act, right?

13 "A. I think that's a fair statement.

14 "Q. That's something that you would have to know in your job?"

15 THE COURT: This is not going to help me. Let's go
16 down to -- hold on. Start at 79, 23.

17 MR. ROLLIN: Your Honor, in this context, may I ask
18 the Court to take judicial notice of the Trust Indenture Act?

19 MS. SHAH: Objection, your Honor.

20 THE COURT: It's law, isn't it?

21 MR. ROLLIN: It is law.

22 THE COURT: I take judicial notice of facts, not laws.
23 Laws, you argue.

24 MR. ROLLIN: Very well, I will. At 79, 23.

25 "Q. Follow along with me. I'll ask you questions as I go

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1 along. Notwithstanding any other provision of the indenture to
2 be qualified, the right of any holder of any indenture security
3 to receive payment of the principal of and interest on such
4 indentured security on or after the respective due dates
5 expressed" --

6 THE COURT: Excuse me. I don't think it's useful to
7 me to read the language of the indenture. You're going to
8 argue that.

9 MR. ROLLIN: I have -- it's just foundational to a
10 couple of questions. I'll skip over it.

11 THE COURT: What are the questions?

12 MR. ROLLIN: I'll ask the questions.

13 THE COURT: Where are you going now? Your reading of
14 various provisions of the trust indenture is not helpful.

15 MR. ROLLIN: I'll skip down. If I may resume at 84,
16 18.

17 THE COURT: No.

18 MR. ROLLIN: Judge, this has to do with whether Wells
19 Fargo considered it, not what the law says.

20 THE COURT: I'm sure it did.

21 MR. ROLLIN: I'm sorry, your Honor?

22 THE COURT: I'm sure it did.

23 MR. ROLLIN: I believe the testimony is --

24 THE COURT: Is the discussion of Credit Suisse how to
25 handle it, relevant?

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1 MR. ROLLIN: It's identical to the situation with ING.
2 So if your Honor will accept that, we can move past it.

3 THE COURT: Move past that, please. 91, 7, what
4 document are you referring to?

5 MR. ROLLIN: I'll just take a look. Right. This
6 looks like the response to ING -- I'm sorry, Credit Suisse.
7 It's on the same issue, materially identical to the response.

8 THE COURT: You want that, right?

9 MR. ROLLIN: I'm sorry?

10 THE COURT: You want that?

11 MR. ROLLIN: I do want that.

12 THE COURT: Okay. So let's just put it in, and it
13 says: In our letter to Credit Suisse --

14 MR. ROLLIN: Your Honor, that's TX4, by the way. May
15 I move the admission of TX4, and then we'll be able to talk
16 about it.

17 THE COURT: Yes, TX4 is received.

18 MR. ROLLIN: Thank you.

19 THE COURT: It's a Wells Fargo letter to Credit
20 Suisse. What date?

21 MR. ROLLIN: This is an e-mail dated January 18, 2012.

22 (Defendant's Exhibit TX4 received in evidence)

23 THE COURT: You can read 91, 7.

24 MR. ROLLIN: That's the answer; so I'll ask the
25 question at 91, 5.

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1 THE COURT: The question, read it. So just read it,
2 Miss Braswell.

3 MS. BRASWELL: The answer?

4 THE COURT: Yes.

5 "A. It says: Our position is that we will allocate losses in
6 accordance with the terms of the indenture, and we won't
7 rewrite the terms of the indenture without a formal amendment.

8 BY MR. ROLLIN:

9 "Q. Without a formal amendment?

10 "A. Yes.

11 "Q. And what you say is you -- in the following sentence, you
12 say 'you.' When you had been contacted by another holder, you
13 engaged counsel to review the documents and to advise you how
14 best to proceed, right?

15 "A. That's what it says, yes.

16 "Q. And that's true, right?

17 "A. We did seek the advice of counsel.

18 "Q. Yes. And it says -- you go into the specifics. You say:
19 Specifically, we explored whether an indenture amendment
20 without the consent of note holders under section 9.015 or
21 9.016 of the indenture was possible, right? That's what you
22 told them?

23 "A. Yes.

24 "Q. Sure. What you told the representative from Credit Suisse
25 was based on the advice of counsel and based upon several

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1 conversations with the indenture trustee and their counsel and
2 the owner trustee. We decided at that time that such an
3 indenture amendment was not possible?

4 "A. That's what the language says.

5 "Q. And that's what you told them, right?

6 "A. That's what's in the letter.

7 "Q. And that was true?

8 "A. That's what we -- if we wrote it, we believed that was the
9 case.

10 "Q. And then you talk about the key considerations that the
11 group considered. The key considerations that led us to that
12 conclusion included, inter alia, the fact that, i, the class
13 1-A-3 note holders would be arguably harmed by the amendment
14 and, ii, the indenture lacked a provision allowing the parties
15 to amend it to conform to the Pro Supp, right? That's what you
16 told them?

17 "A. Yes.

18 "Q. And that's true?"

19 THE COURT: The objection is sustained.

20 MS. SHAH: Thank you, your Honor.

21 "Q. Now, one of the things that you wrote in here is the 1-A-3
22 note holders" --

23 THE COURT: We've already gone over that.

24 MR. ROLLIN: This is for their awareness, your Honor.

25 THE COURT: We know that. We know that. Clearly,

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1 it's so. The rest of the page is redundant, or as they say in
2 the trade, cumulative.

3 MR. ROLLIN: May we begin with what's marked as
4 Exhibit 9, TXV.

5 THE COURT: Is that page 104, Line 18?

6 MR. ROLLIN: Yes. Thank you.

7 THE COURT: Go ahead.

8 MR. ROLLIN: Exhibit -- May we show TXV? Thank you.

9 "Q. Exhibit TXV is an e-mail chain in which you are copied,
10 right?

11 "A. Yes.

12 "Q. And it is an e-mail chain between Wells Fargo, on one
13 hand, and Boris Peresechensky, on the other, right?

14 "A. Yes.

15 "Q. And it is an e-mail from Mr. Warble at Wells Fargo back to
16 Mr. Peresechensky, right?

17 "A. Yes.

18 "Q. Copying you, right? Right?

19 "A. Yes.

20 "Q. It says: Hi, Boris. In regards to your inquiry
21 concerning AHMIT 2005-2, we are bound by the indenture. Absent
22 an amendment to the indenture, Wells Fargo will allocate
23 realized losses to the class 1-A-2 and class 1-A-3 notes in the
24 manner currently set forth in the indenture.

25 Did I read that correctly?

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1 "A. Yes."

2 MS. SHAH: Objection, your Honor.

3 THE COURT: Where are you?

4 MR. ROLLIN: Your Honor, I'm on -- that question began
5 at Page 105, Line 12. I don't know the nature of the
6 objection, but it is an admission by Wells Fargo.

7 THE COURT: Just a minute. Just a minute. I don't
8 see an objection here.

9 MS. SHAH: We'd like to object to the document on
10 hearsay grounds.

11 THE COURT: Pardon?

12 MS. SHAH: We're objecting to the document on hearsay
13 grounds, your Honor.

14 MR. ROLLIN: Your Honor, I'll ask you to take the --

15 THE COURT: Can I think for a moment?

16 MR. ROLLIN: Yes.

17 THE COURT: It's offered as an admission against Wells
18 Fargo. I receive the subject. Overruled.

19 MR. ROLLIN: I'll re-read the question, Page 105,
20 Line 12.

21 BY MR. ROLLIN:

22 "Q. It says: Hi, Boris. In regards to your inquiry
23 concerning AHMIT 2005-2, we are bound by the indenture. Absent
24 an amendment to the indenture, Wells Fargo will allocate
25 realized losses to the class 1-A-2 and class 1-A-3 notes in the

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1 manner currently set forth in the indenture.

2 Did I read that correctly?

3 "A. Yes.

4 "Q. And that's what Mr. Warble told Mr. Peresechensky?"

5 MS. SHAH: Objection.

6 "Q. Right?"

7 THE COURT: What line?

8 MS. SHAH: The question is 105, Line 21.

9 THE COURT: Sustained.

10 MR. ROLLIN: Your Honor, if I may argue. That is --

11 THE COURT: It's redundant. It's cumulative evidence.
12 The letter speaks for itself. I don't know why we're doing
13 this.

14 MR. ROLLIN: I move the admission of TXV.

15 THE COURT: Received.

16 (Defendant's Exhibit TXV received in evidence)

17 MR. ROLLIN: I'm picking up at 106.

18 THE COURT: I see what you're getting at; so maybe I
19 can just say what I'll find here, namely, that Wells Fargo, at
20 this time, was telling all who called, it was going to follow
21 the loss allocation ratios -- priorities, not ratios, set out
22 in the trust indenture and did not think that it would change
23 that unless it received a hundred percent consent of the 1-A-3
24 note holders, that was the position that it expressed. Is that
25 a --

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1 MR. PICKHARDT: Your Honor?

2 THE COURT: -- a fair reading of these documents?

3 MR. PICKHARDT: Your Honor, what is specifically being
4 addressed here is amendments of the indenture.

5 THE COURT: I understand what's being addressed. Are
6 the notes telling we're not going to be able to amend until we
7 get a hundred percent, we're not going to get a hundred percent
8 because the note holders are injured by that. So we can't get
9 consent from them. And we're going to follow the indenture.

10 MR. PICKHARDT: I think that's exactly right, your
11 Honor. It's speaking specifically about amendment and
12 amendment pursuant to the terms of the indenture.

13 THE COURT: I got the whole thing.

14 MR. ROLLIN: Your Honor, the one point that I'd like
15 to continue on at Page 110, Line 3, that drills down on that
16 issue in just a couple of lines.

17 BY MR. ROLLIN:

18 "Q. It does not say a method" --

19 THE COURT: Where are you? You're going into
20 negatives. I've got it all. All this is stricken. This
21 clutters up the record.

22 MR. ROLLIN: I'll carry on, your Honor, with
23 Exhibit TXS and --

24 THE COURT: Just a minute.

25 MR. ROLLIN: That's Page 114.

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1 THE COURT: What page are you on now?

2 MR. ROLLIN: Page 114, Line 18.

3 THE COURT: Okay.

4 MR. ROLLIN: Thank you.

5 THE COURT: Is this another exchange with
6 Peresechensky?

7 MR. ROLLIN: No, your Honor. This is an internal
8 exchange about the Peresechensky exchange.

9 THE COURT: What is this going to add?

10 MR. ROLLIN: This is going to add that there was a
11 sense of finality even in the minds of the people at Wells
12 Fargo because they are speaking internally about the
13 communication with Mr. Peresechensky and that he would be happy
14 to know that they were following the indenture. In other
15 words, there wasn't in their mind some alternate way of --

16 THE COURT: Miss Shah?

17 MS. SHAH: Objection, your Honor.

18 THE COURT: Sustained. Everything is final until an
19 enterprising lawyer figures out a way.

20 MR. ROLLIN: It goes to, your Honor -- this goes to
21 reliance.

22 THE COURT: Whose reliance?

23 MR. ROLLIN: The reliance of Mr. Peresechensky and
24 Semper on the statements and the finality of the statements
25 made by Wells Fargo at that time.

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1 THE COURT: What's the date?

2 MR. ROLLIN: The date of that exchange occurs on
3 October 3rd and 4th of 2012.

4 MS. SHAH: Your Honor, we object both on the ground
5 this is irrelevant because it's after Semper's purchase --

6 THE COURT: Overruled.

7 MS. SHAH: -- and on the ground that this is an
8 internal Wells Fargo communication; so it can't speak to
9 Semper's reliance.

10 THE COURT: Overruled.

11 MR. ROLLIN: I'll skim through here, your Honor; so I
12 can find a place to continue.

13 THE COURT: The next several pages reflect agitation
14 from the 1-A-2 holders, Credit Suisse and ING. Wells Fargo is
15 being pinched. The 1-A-3 holders want to do one thing and the
16 1-A-2 holders want to do another thing.

17 MR. ROLLIN: I'm not sure that the record says that
18 1-A-3 holders wanted Wells Fargo to do anything. They wanted
19 them to do just what they were already doing and said they had
20 been doing.

21 THE COURT: Exactly.

22 MR. ROLLIN: I'd like to -- I think the best place to
23 continue here is on Page 124, Line 11.

24 THE COURT: That doesn't --

25 MR. ROLLIN: This --

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1 THE COURT: No one gives them a direction indemnity
2 letter.

3 MR. ROLLIN: That's right.

4 THE COURT: So everybody's attempt to have Wells Fargo
5 cooked in its own oil.

6 MR. ROLLIN: Your Honor, I think what this evidence
7 goes to is the fact that, although Wells Fargo had previously
8 conditioned any consent solicitation on receipt of direction
9 indemnity from ING and from Credit Suisse, they proceeded
10 nonetheless to seek consent in its action without having
11 received direction.

12 THE COURT: Yes, because they're pinched. They've got
13 to do something. Whatever they do, someone is going to be
14 unhappy. If they do nothing, someone is going to be unhappy.
15 So they go to court, which is what happens in these things. I
16 don't think I have any more to learn from this deposition.

17 MR. ROLLIN: There's a bit more. I understand that
18 your Honor has read the next couple of pages. We'll skip
19 through those and get to something that would be helpful.

20 THE COURT: What's a TIP?

21 MR. ROLLIN: Trust instruction proceeding.

22 THE COURT: All right. Starts about 140 -- well,
23 start with 139, where the 1-A-2 holders are pushing Cohen to
24 have Wells Fargo follow the loss allocation provided in the Pro
25 Supp. Start with 139, Line 20.

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1 MR. ROLLIN: I will, and I think the reference here,
2 your Honor, is to not generically 1-A-2 holders, but to
3 Och-Ziff and --

4 THE COURT: What?

5 MR. ROLLIN: I believe the reference here is to
6 Och-Ziff and to Scepter.

7 THE COURT: Och-Ziff?

8 MR. ROLLIN: Yes. Yes. For context, these
9 communications pertain to the notes that are now held by
10 Scepter and purchased by Och-Ziff, as testified about by
11 Mr. Mago.

12 THE COURT: Och-Ziff doesn't want them to follow the
13 loss indenture -- okay, withdrawn.

14 MR. ROLLIN: I'm picking up at 139, Line 20, as your
15 Honor directed.

16 THE COURT: Yes.

17 BY MR. ROLLIN:

18 "Q. And what they were telling you was that they wanted Wells
19 Fargo to take some action to facilitate that?

20 MS. BRASWELL: I'm sorry, I didn't pick up at what
21 line you were at.

22 MR. ROLLIN: You know, for your Honor, just for
23 context, I'll start at 139, 8.

24 BY MR. ROLLIN:

25 "Q. Yeah. They were inquiring, in these telephone

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1 conversations that we're talking about, about what could be
2 done about reversing the loss allocation as it's set forth in
3 the indenture?

4 "A. Well, it was their position that they wanted to follow the
5 loss allocation for the Pro Supp.

6 "Q. And what they were telling you was that they wanted Wells
7 Fargo to take some action to facilitate that?

8 "A. I guess that's" --

9 MS. SHAH: Objection.

10 THE COURT: So they talk about a trust instruction
11 proceeding?

12 MR. ROLLIN: Right.

13 THE COURT: Affectionately known as a TIP, and the
14 possibility of interpleader. And at 141, 3, Mr. Cohen says:
15 "We did file a trust instruction petition," and it was pursuant
16 to the suggestion of Och-Ziff, and it was filed in the State
17 Court of Minnesota.

18 MS. SHAH: Actually, your Honor, that's not what the
19 testimony reflects.

20 THE COURT: That's my overlay of the testimony. I'm
21 trying to cut through it.

22 MS. SHAH: I understand, but I think that is
23 Mr. Rollin's argument of what the testimony reflects. I think
24 what the actual testimony Mr. Cohen testified to, is it was not
25 at Och-Ziff's suggestion that they filed a trust instruction

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1 proceeding and at their direction. He actually testifies
2 that --

3 THE COURT: I got it. It was not in consultation with
4 Och-Ziff.

5 MS. SHAH: Nor at their suggestion.

6 THE COURT: I think he listened to what they had to
7 say, and I can't recall if they suggested a trust instruction
8 proceeding.

9 MS. SHAH: Right.

10 MR. ROLLIN: Your Honor, there's actually --

11 THE COURT: What's the difference? Who cares who
12 suggested it? We know that it was done.

13 MR. ROLLIN: Right. Your Honor, I think here's the
14 problem. When each side characterizes what they think the
15 evidence means, and we believe that it was done at the
16 suggestion and, in fact, urging of Och-Ziff and --

17 THE COURT: So why not cross that -- They benefited by
18 it. What's wrong with that?

19 MR. ROLLIN: It's part of the mosaic of the case.

20 THE COURT: Mr. Rollin, I know that you favor one
21 side, and Mr. Pickhardt is favoring the other side, and Wells
22 Fargo is in the middle. The only way it benefits is if it does
23 something that alleviates the risk it holds. It does something
24 one way, you'll sue them. If he goes another way,
25 Mr. Pickhardt will sue him. So they want to get some guidance

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1 from the Court. That's what happened.

2 MR. ROLLIN: We think it's important for your Honor to
3 see the part of the picture that Wells Fargo is taking action
4 adverse to some holders at the request of other holders, and
5 interestingly --

6 THE COURT: I so understand.

7 MR. ROLLIN: But without requiring the direction and
8 indemnity they required from others.

9 THE COURT: I so understand.

10 MS. SHAH: Your Honor?

11 THE COURT: They have a very clear interest to do so
12 because that's the only way they will avoid a lawsuit.

13 MR. ROLLIN: Well, I think --

14 THE COURT: Yes, Miss Shah?

15 MS. SHAH: Respectfully, your Honor, we disagree with
16 the characterization about what Mr. Rollin has said what the
17 evidence shows --

18 THE COURT: I know, but that's how I find.

19 MS. SHAH: -- with regard to Wells Fargo taking
20 direction adverse to one or the other.

21 THE COURT: They're not taking direction. They find
22 that their holders are oppositely advantaged and disadvantaged.

23 MS. SHAH: Yes, your Honor. We believe that there are
24 holders on each side, and Wells Fargo was in the middle.

25 THE COURT: There are holders on each side. Pick up

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"Cohen"

1 Page 146, Line 38, TX8. Miss Braswell, 146, Line 13.

2 "A. This is a notice we sent out in July 2013 informing that,
3 you know, we had sent out the previous notice. We had asked
4 for consent and that we had received at least one objection; so
5 we didn't receive one hundred percent of the affected class'
6 consent.

7 BY MR. ROLLIN:

8 "Q. In fact, you received zero percent of the affected class'
9 consent, correct?

10 "A. I believe that's the case, but I don't want to say for
11 sure because I can't recall.

12 "Q. That's true to this day, as far as you know? To this day,
13 not a single 1-A-3 note holder has consented to an amendment,
14 right?

15 "A. As far as I know, that's correct.

16 "Q. And this document was dated -- I'm sorry, this information
17 notice, Exhibit TX8, is dated what?

18 "A. July 11th, 2013."

19 MR. ROLLIN: Move the admission of TX8.

20 THE COURT: Received.

21 (Defendant's Exhibit TX8 received in evidence)

22 BY MR. ROLLIN:

23 "Q. Mr. Cohen, do you have a recollection of Scepter or
24 Och-Ziff urging Wells Fargo to file a TIP in Minnesota?

25 "A. As I said, we talked about" --

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"Cohen"

1 MS. SHAH: Objection, your Honor.

2 THE COURT: Overruled.

3 "A. -- I remember them requesting some kind of legal action,
4 but I don't know if it was specifically a TIP."

5 MR. ROLLIN: May we show TXBI, please?

6 MS. SHAH: Your Honor, we object to this exhibit as
7 hearsay.

8 MR. ROLLIN: It's an admission.

9 MS. SHAH: It's not an admission, your Honor. It's a
10 conversation --

11 THE COURT: Please don't argue. Miss Shah, if you
12 could just put the microphone closer to you, it will pick up.

13 MS. SHAH: Thank you, your Honor.

14 THE COURT: The document is received. Objection
15 overruled.

16 (Defendant's Exhibit TXBI received in evidence)

17 MR. ROLLIN: Picking up at Page 169, Line 12.

18 "Q. Mr. Cohen, do you have a recollection of Scepter or
19 Och-Ziff urging Wells Fargo" --

20 MR. ROLLIN: Your Honor, I'm just going to rehash the
21 document, and you don't want me to do that; so let me skip.

22 THE COURT: All right. So you finally get Cohen to
23 admit that Scepter or Och-Ziff urged Wells Fargo to file a
24 trust instruction procedure.

25 MS. SHAH: Your Honor, in fact --

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"Cohen"

1 THE COURT: In Line 171, 4, Cohen answers: "I mean,
2 this is what the language says. I'm not saying it's not right.
3 I don't have independent recollection if they asked for a TIP.
4 I know a lot of legal action was discussed and interpleader and
5 all that. I just don't recall that."

6 MS. SHAH: Yes, your Honor. What we think Mr. Cohen
7 testifies to is the fact that, even looking at this document,
8 he doesn't know --

9 THE COURT: What's the difference?

10 MS. SHAH: Frankly, your Honor, we don't know what the
11 difference is.

12 THE COURT: What?

13 MS. SHAH: It's a characterization that Semper has put
14 into the record regarding some kind of collusion here.

15 THE COURT: Of course the 1-A-2 notes don't want --
16 the note holders don't want you to follow the trust indenture.
17 They claim they bought on the offering documents and that
18 there's a certain regimen that goes with the pricing and
19 everything else, as I said before yesterday. I know what the
20 demands are. You're in -- Wells Fargo is in the middle.

21 MR. ROLLIN: Your Honor, just to be clear, I don't
22 believe that Semper is claiming they bought off the offering
23 documents. They testified just a little while ago they
24 reviewed the indenture in view of the loss allocation priority.

25 THE COURT: They did what you did.

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"Cohen"

1 MR. ROLLIN: I'm sorry?

2 THE COURT: They analyzed the situation and figured
3 out it's a good investment. You analyzed the situation and
4 figured out it's a good investment. They ended up with 1-A-2's
5 and you ended up with 1-A-3s, and here I am in the middle of
6 the dispute.

7 And Cohen says at 174, 9:

8 "Q. And you told the people from Och-Ziff before you told any
9 other holders that you filed this, right?

10 "A. It appears from this that we did send him this e-mail
11 before we circulated a notice. I'm not sure if any other --
12 there might have been another notice to other investors that
13 were in contact during the interim that we may have told. I
14 just don't recall."

15 And he answers at 176, 11: "Well, Wells Fargo did
16 make a decision to file a TIP proceeding in Minnesota. We did
17 it based on the totality of the circumstances and our
18 discussions internally and with counsel."

19 And we didn't demand that Scepter or Och-Ziff cover
20 the costs associated with the proceeding. You can pick up at
21 181, 4.

22 MR. ROLLIN: I will.

23 THE COURT: Question: Did you go to Scepter or
24 Och-Ziff indirectly to cover your costs? And you answer.

25 "A. No, we didn't go to them at all.

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"Cohen"

1 BY MR. ROLLIN:

2 "Q. So who did pay for that?

3 "A. The legal cost we recover from the trust.

4 "Q. You take the legal cost from the trust fund?

5 "A. Yes."

6 THE COURT: That's what trustees do.

7 MR. ROLLIN: I'm going to skip over, your Honor, to --

8 THE COURT: God forbid that trustees should pay.

9 MR. ROLLIN: Sorry?

10 THE COURT: No, I said, God forbid that trustees
11 should pay. But fiduciaries commonly reimburse themselves for
12 their expense.

13 MR. ROLLIN: Just a follow-up question on that point,
14 your Honor. Page 202, Line 3.

15 THE COURT: It's obvious.

16 MS. SHAH: We already objected to this question.

17 THE COURT: It's not objectionable. It's just
18 obvious. The question: Now, if the Court reforms the loss
19 allocation priority, are all the bondholders going to benefit
20 from that?

21 And, Miss Braswell, 202, Line 7.

22 "A. I can't speak for the bondholders, whether they would
23 benefit or not. I don't know."

24 MR. ROLLIN: Carrying on at 202, Line 21.

25 "Q. If the Court reforms the indenture, then the 1-A-3 holders

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"Cohen"

1 will start to take losses sooner than they otherwise would if
2 the indenture remains currently as it is?

3 "A. I would say if the Court orders that the language of the
4 Pro Supp should be followed and that the A-3 holders take
5 losses before the A-2 holders, then they would take the losses
6 first.

7 "Q. And you understand that that would harm -- to use some of
8 your earlier language, adversely effect those A-3 holders,
9 agreed?"

10 MS. SHAH: Objection, your Honor.

11 THE COURT: Overruled.

12 "A. If those holders did not want to take losses before the
13 1-A-2 holders, then it would harm them."

14 THE COURT: The next question: "And the inverse is
15 also true, that if the Court reforms the indenture and the A-3
16 holders have to take losses first, then the A-2 holders will
17 not have to take losses as is currently set forth in the
18 indenture, right?

19 "A. Can you repeat that? I'm sorry."

20 THE COURT: We'll skip that. You can answer, and the
21 answer is: "I think that's a fair statement."

22 Okay. I think that finishes it. Anything more on
23 this deposition?

24 MR. ROLLIN: Yes, your Honor. Let me just flip
25 through and cut out as much as I can. Carrying on at Page 222,

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"Cohen"

1 Line 5. Are you ready?

2 THE COURT: Yes.

3 "Q. But you did know as far back as the end of 2010, that the
4 ratings agency downgraded the A-2 as a result of the way the
5 indenture allocates losses, correct?

6 "A. I think we were notified of that by the letter we received
7 from the investor back in 2010.

8 "Q. From ING?

9 "A. Yes.

10 "Q. And then you went and you verified that, you saw that, in
11 fact, the A-2 had been downgraded by the ratings agencies,
12 right?

13 "A. I believe they -- I believe they attached some
14 communication. I don't know if we had to independently verify.
15 I think they attached to their correspondence the communication
16 from, I believe it was Moody's.

17 "Q. Was there a point where Wells Fargo confirmed to Moody's
18 that Wells Fargo, in fact, would be relying on the loss
19 allocation as set forth in the indenture?

20 "A. I'm not aware of that.

21 "Q. Who would be responsible for that communication, if it
22 happened?

23 "A. I don't know that that communication ever happened;
24 so...."

25 MR. ROLLIN: Let me skip down, your Honor. 224,

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"Cohen"

1 Line 10.

2 "Q. Why then did Wells Fargo not take any action that could
3 lead to a change in the loss allocation priority between the
4 end of 2010 and May of 2013?

5 "A. I think if you see from our responses to the investors at
6 that time, it was our position that we were following the
7 indenture, and we had -- we had reached out to -- we had
8 responded to these investors who had reached out to us and said
9 if you want to direct and indemnify for a consent solicitation,
10 we'll do it. And none of the investors so provided."

11 MR. ROLLIN: Carrying on at Page 225, Line 17.

12 "Q. Now, you didn't have to initiate this litigation, did you?

13 "A. I mean, have to? I mean, I don't know how to answer that
14 question. I mean, we came to a decision given the totality of
15 the circumstances, all the facts and the imminence of the loss
16 allocation, that we decided it was in the best interest of the
17 trust to bring the action to resolve the issue before it hit."

18 THE COURT: And the rest of the question on this
19 subject is that Wells Fargo made a decision that even though
20 there was nothing in the trust instruments that required them
21 to file the action, that was a prudent thing for them to do and
22 so they did it.

23 MR. ROLLIN: The question at 227, Line 18.

24 "Q. And if you didn't file the action, you would simply follow
25 the indenture?"

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"Cohen"

1 THE COURT: That's it --

2 MS. SHAH: Objection, your Honor.

3 THE COURT: Sustained. I think we're finished with
4 this.

5 MR. ROLLIN: I'm confirming that there isn't something
6 that might be helpful to your Honor towards the end, but I am
7 flipping through, I'm trying to determine that. If I may, your
8 Honor.

9 THE COURT: At 357?

10 MR. ROLLIN: I'm sorry?

11 THE COURT: 357 -- let's start at 355, 18. "Do you
12 think it would have been a good use of trust funds to bring a
13 trust instruction proceeding in 2010 before it was apparent
14 that any of the affected classes would begin to be taking
15 losses?

16 "A. I just don't know if that time, 2010, we were
17 contemplating. You know, it may have been discussed, but at
18 that point, it was not imminent and the circumstances at that
19 time didn't -- you know, didn't call for us to bring legal
20 action at that time."

21 THE COURT: Keep going, okay, Mr. Rollin.

22 MR. ROLLIN: I'm sorry, I don't have that.

23 THE COURT: 357, 9. The question: "Was the fact that
24 losses are now imminent to the class 1-A note holders one of
25 the reasons that Wells Fargo decided to bring the trust

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"Cohen"

1 instruction proceeding now?

2 "A. I think that was one of the -- you know, a big factor in
3 which the timing for why we brought it, is because the losses
4 were reaching -- the losses were reaching a point where it was
5 going to hit the classes more imminent, and we wanted direction
6 from the Court about how to proceed."

7 THE COURT: And you go down to Line 25: "Q. If you
8 had no idea whether the losses would ever reach a level where
9 it would impact the class 1-A note holders, would you have
10 brought the trust instruction proceeding at this point in time?

11 "A. Well, I don't -- I think if the losses -- if we didn't
12 know if they would ever hit, then I don't know if there would
13 be a reason to bring the proceedings. I mean, if it wouldn't
14 -- you know, if it wasn't something that we were going to have
15 to deal with, then I don't see a reason why we would bring a
16 legal proceeding."

17 THE COURT: And follows up at 359, Line 3: "So if the
18 losses would never hit that class, then there would be no
19 reason to resolve that discrepancy." I think we're finished.

20 MR. ROLLIN: Your Honor, I do have some on that
21 particular topic.

22 THE COURT: Why don't we break for lunch. You can go
23 over this and find out if there's anything else you want to
24 deal with.

25 MR. ROLLIN: It's one line of questions. It should

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"Cohen"

1 just take a moment.

2 THE COURT: Go ahead. Go, go.

3 MR. ROLLIN: Thank you.

4 THE COURT: What is it, Miss Shah?

5 MS. SHAH: Your Honor, we may have just a few discrete
6 points on this.

7 THE COURT: Look it over at lunchtime and make a
8 decision.

9 MS. SHAH: Thank you.

10 MR. ROLLIN: Your Honor, I'm carrying on here at Page
11 421, at the very end, Line 11.

12 THE COURT: Go ahead.

13 MR. ROLLIN: I'll wait for Miss Braswell. Okay?

14 "Q. Did Wells Fargo believe in the end of 2010 that losses
15 were not going to hit the A-2 and A-3 classes of this
16 particular trust?

17 "A. Oh, I don't think we thought that they were not going to
18 hit the class.

19 "Q. It was going to hit eventually?

20 "A. I think it's fair to say that we thought that the losses
21 would eventually reach these classes. The timing we just did
22 not know about."

23 MR. ROLLIN: I believe that's all I have, your Honor.

24 THE COURT: Okay. We'll break. We'll resume at 2:15.

25 (Luncheon recess)

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"Cohen

1 AFTERNOON SESSION

2 2:15 pm

3 (Trial resumes)

4 (In open court)

5 THE COURT: Good afternoon. Be seated.

6 So we broke for lunch. I think it is Ms. Shah's turn
7 to start?

8 MS. SHAH: Yes, your Honor.

9 THE COURT: Mr. Rollin, did you finish?

10 MR. ROLLIN: I have finished, your Honor.

11 THE COURT: Ms. Shah.

12 MS. SHAH: In the interest of expediency, we are going
13 to seek to two do short excerpts.

14 THE COURT: Could you say it loudly in an stentorian
15 voice.

16 MS. SHAH: Thank your Honor.

17 THE COURT: Ms. Shah.

18 MS. SHAH: 129 line 19:

19 "Q Mr. Cohen, I am showing you what has been marked for
20 identification as Exhibit 129. Exhibit 129" --

21 THE COURT: I don't have 129.

22 MS. SHAH: I am sorry.

23 "Q I am showing you what has been marked for identification
24 as Exhibit TX-Q.

25 MR. PICKHARDT: 129 is 19, your Honor.

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"Cohen

1 THE COURT: Okay.

2 BY MS. SHAH:

3 Q. I am showing you what has been marked for identification as
4 Exhibit TX-Q. TX Q is a series of e-mails between Wells Fargo
5 and a gentleman at Marathon.

6 "A Yes.

7 "Q And Marathon is inquiring about the loss allocations as
8 well?

9 "A It appears so."

10 MS. SHAH: We seek to move TX-Q into evidence.

11 THE COURT: We have the testimony. We don't need it.
12 Denied. It is clear to me that both Sceptre and Semper were
13 interested oppositely in the problem.

14 One wanted priority in the A-2 notes, the other wanted
15 priority in the A-3 notes. I know you're fighting about who
16 claims what and who pitched whom. It is of no interest to me.
17 I know there are cross-claims which, following this phase of
18 the proceeding, are undoubtedly going to be dismissed.

19 MS. SHAH: Your Honor, we understand that. It is just
20 this one communication is between the 1-A-1 note-holders and
21 Wells Fargo and there has been testimony about note-holder
22 communications. We would like to get --

23 THE COURT: It is in the record. Marathon is a 1-A-1
24 holder?

25 MS. SHAH: Yes.

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"Cohen

1 THE COURT: It is in the record.

2 MS. SHAH: Thank you.

3 MS. SHAH: If we can turn next to page 259 line 8:

4 "Q Mr. Cohen, are you aware of any written communication in
5 which Wells Fargo represented to Semper Capital Management it
6 would not institute a trust instruction proceeding in this
7 case?

8 "A I am not aware of any such communication.

9 "Q Are you aware of any oral communication in which Wells
10 Fargo represented to Semper Capital Management that it would
11 not institute a trust instruction proceeding in this case?

12 "A I am not aware of that communication.

13 "Q Did Semper Capital Management ever ask Wells Fargo whether
14 it would or would not bring a trust instruction proceeding in
15 this case?

16 "A I don't recall that."

17 MS. SHAH: If you could turn, please, to 285 Line 2:

18 "Q I am going to hand you what has been marked as Exhibit
19 TX-253 for identification. Is this the letter you received
20 from ING?

21 "A This looks like the letter.

22 "Q Is this the first time that Wells Fargo received notice
23 about the inconsistency between the ProSupp and indenture, as
24 far as you know?

25 "A Far as I know."

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"Cohen

1 MS. SHAH: We seek to admit this into evidence as
2 well.

3 THE COURT: Could I see the document. What does FBS
4 mean?

5 MS. SHAH: I believe that's -- sorry? Where are you
6 looking?

7 THE COURT: First line.

8 MS. SHAH: I believe that is the first indication at
9 the end of ING's name.

10 MR. ROLLIN: It is federal savings bank, I believe.

11 THE COURT: Thanks.

12 MR. ROLLIN: We object to this exhibit as hearsay. As
13 to notice, no problem.

14 THE COURT: Turn the page, please.

15 (Pause)

16 THE COURT: Received.

17 (Plaintiff Exhibit TX-253 received in evidence)

18 MS. SHAH: If you could turn next to Page 424 line 19,
19 please.

20 THE COURT: One minute, please.

21 (Pause)

22 THE COURT: Okay.

23 MS. SHAH: We are at Page 424 line 19. In the copy
24 you have, I will be reading the green portion.

25 "Q It's correct, is it not, that Wells Fargo decided to file

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"Cohen

1 the trust instruction proceeding at a point in time where it
2 would be the losses were imminently going to hit the 1-A notes?
3 "A I think that is a fair characterization that the time we
4 filed the petition, we thought losses were imminent, so that we
5 felt the issue needed to be addressed. We wanted it to be
6 addressed before the losses hit the affected classes."

7 MS. SHAH: That is all, your Honor.

8 THE COURT: Anything further?

9 MR. ROLLIN: No, nothing from me.

10 THE COURT: Thank you.

11 (Pause)

12 THE COURT: Mr. Rollin.

13 MR. ROLLIN: Your Honor, we call our next witness,
14 Boris Peresechensky.

15 BORIS PERESECHENSKY,

16 called as a witness by the Defendants,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ROLLIN:

20 Q. Mr. Peresechensky, where do you work?

21 A. I work at Semper Capital Management.

22 Q. What is your title?

23 A. My title is portfolio manager.

24 Q. What are your responsibilities as a portfolio manager?

25 A. I am responsible for trading and investing in RMBS,

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Peresechensky - direct

1 residential mortgage-backed securities with Semper Capital
2 Management.

3 THE COURT: Keep your voice up, please.

4 BY MR. ROLLIN:

5 Q. How long have you been at Semper?

6 A. I have been with Semper since 2005.

7 Q. As part of your responsibilities as a portfolio manager at
8 Semper, do you keep abreast of market information?

9 A. Absolutely. It is one of my duties to keep abreast of all
10 market information on a daily basis.

11 Q. What is the market information that you keep abreast of, if
12 you will just describe that for the court, please.

13 THE COURT: May I interrupt you for a minute. The
14 deposition transcript for Daniel Cohen needs to be marked as an
15 exhibit for identification.

16 MS. SHAH: I believe it can be marked as Exhibit
17 TX-270.

18 THE COURT: TX-270.

19 MS. SHAH: TX-270.

20 THE COURT: I will return this transcript.

21 (Pause)

22 (Plaintiff Exhibit TX-270 was marked for
23 identification)

24 THE COURT: Please proceed. I am sorry.

25 BY MR. ROLLIN:

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Peresechensky - direct

1 Q. Will you please describe for the court what market
2 information it is that you keep abreast of as a portfolio
3 manager.

4 A. We collect prices for all non-agencies securities on a --

5 THE COURT: You have to keep your voice up. Make
6 believe you're talking to the clock. Somebody is standing
7 under the clock, and you're talking to that person.

8 THE WITNESS: We collect market caller on a spectrum
9 of non-agency RMBS securities on a daily basis.

10 THE COURT: We collect market caller?

11 THE WITNESS: Market color information, C O L O R,
12 information.

13 THE COURT: Market color?

14 THE WITNESS: Information pertaining to where bonds
15 trade.

16 THE COURT: Where bonds trade? Where do they trade?
17 Face the clock. Where do bonds trade?

18 THE WITNESS: We obtain prices from a variety of
19 sources, from brokers based on where the bid lists, based on --

20 THE COURT: Slow, slow. Where the bid lists are?

21 THE WITNESS: So we collect market color --

22 THE COURT: Let me give you a piece of advice. Are
23 you nervous? You probably never did this before?

24 THE WITNESS: No.

25 THE COURT: You probably never want to do it again.

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Peresechensky - direct

1 Relax. You're not involved. Just give the answers and pay
2 attention to the questions. Speak slowly. Take some water.

3 THE WITNESS: Thanks.

4 THE COURT: Take a breath and testify.

5 THE WITNESS: All right.

6 We collect market data from various bid lists. We
7 interact with over 60 counter-parties and we obtain prices that
8 where bonds are crossed on agency trade, and based on those
9 observations, we are able to determine where the yields the
10 securities clear, and those yields are extremely important
11 input into our evaluation model.

12 THE COURT: The yields are the interest rate, a
13 fraction of interest rate to the price?

14 THE WITNESS: Exactly. You can think of yield as
15 risk-free treasury plus the spread, and the spread reflects
16 either the credit or complexity component of the security.

17 THE COURT: If you face me -- the most important
18 person in this courtroom is not me; it is the Reporter. If you
19 face me, he can't hear you.

20 THE WITNESS: Okay.

21 BY MR. ROLLIN:

22 Q. When you said a moment ago where bonds trade, does that
23 mean the price at which bonds trade?

24 A. Correct, the prices where the bonds trade.

25 Q. And you said non-agency RMBS. That is jargon. Can you

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Peresechensky - direct

1 explain what non-agency RMBS means.

2 A. Yeah, non-agency RMBS private label mortgage-backed
3 securities that don't have any guarantee from the U.S.
4 Government, and they rely on internal edit enhancement to
5 protect investors from losses, various sectors which in
6 non-agency universe. There is prime, all day, sub-prime,
7 option arms. Those are sectors in the non-agency space.

8 Q. How do you keep apprised of market-related information?
9 What tools do you use?

10 A. Well, we use Blumberg. You interact with brokers on
11 Blumberg. We get data from Blumberg and we collect that data
12 and put it into a market color database where we call color on
13 thousands of securities where they're trading, what yields to
14 do they trade, according to our model and according to other
15 models.

16 Q. Other than Blumberg, are there other sources that you get
17 market information from?

18 A. We maintain regular communications with brokers, as I said,
19 interact with over 60 broker-dealers so there are always
20 telephone communications, always meetings with brokers where we
21 obtain pertinent market color.

22 Q. Do you monitor market trends?

23 A. Absolutely. It is one of the most important functions to
24 know where the bonds are trading and what yields, current
25 yields the bonds clear. It is one of the most loss location

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Peresechensky - direct

1 inputs into a modeling analysis is to know exactly what yields
2 certain securities should trade.

3 Q. Is there any literature that you regularly read on issues
4 related to investments?

5 A. Sure.

6 MR. PICKHARDT: Objection, your Honor.

7 THE COURT: Overruled.

8 A. Yeah, I read weekly research reports from all major
9 broker-dealers. I follow housing trends, read real estate
10 publications.

11 Q. Do you attend industry conferences?

12 A. Regularly. I attend the annual ABS East conference usually
13 held in Miami and I attend the ABS West or East ASF conference
14 in Vegas and last month I was globally BS in Barcelona.

15 Q. What types of, what topics are covered that relate to your
16 trading mortgage-backed securities in general at the
17 conferences?

18 A. Well, people exchange color trends, and so it is helpful to
19 formulate some ideas and outlooks by talking to other market
20 participants and get their point of view.

21 Q. We are going to back up a little bit and ask you to tell
22 the court about your education. Will you please do so.

23 A. Sure. I graduated from Colombia with a degree in economics
24 and operation research in 1999.

25 THE COURT: Colombia College?

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Peresechensky - direct

1 THE WITNESS: Columbia College.

2 BY MR. ROLLIN:

3 Q. Would you tell us about your experience in this profession
4 leading up to your employment at Semper, please.

5 A. Okay. I started my career at Lazar Management as junior
6 PM, Jr. portfolio manager supporting MBS --

7 THE COURT: Slower, slower, slower.

8 A. -- from there on I moved to HSBC Securities, where I was a
9 market risk analyst overseeing compliance with risk limits for
10 all trading desks, and then I moved to Miami to work for Bay
11 View Financial, one of the major securitization shops of
12 security size deals back then and then I was risk manager
13 managing multi-billion dollar --

14 THE COURT: The problem, your sentences are too long.
15 You don't breathe in the middle. Break down the sentence, will
16 you please.

17 THE WITNESS: Okay.

18 BY MR. ROLLIN:

19 Q. Will you describe your, in general, your familiarity with
20 mortgage-backed securities.

21 A. Sure. I had some exposure right at the start of my career
22 when I was supporting MBS desk at Lazar. I managed interest
23 rate risk of whole portfolio at Bay View, so I dealt with the
24 loan side of the business and went to Semper in 2005 and
25 started by trading agency MBS products such as TBAs, specified

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Peresechensky - direct

1 pools, agency most derivitives.

2 MR. ROLLIN: Show down on those jargon terms
3 specifically.

4 THE COURT: Are any of your colleagues following the
5 testimony in realtime?

6 MS. BRASWELL: I can see it here.

7 THE COURT: And that is so also on the front table?

8 MS. SHAH: Yes, your Honor.

9 THE COURT: If there is a problem, stop us, please.

10 MS. SHAH: Yes, your Honor.

11 MS. BRASWELL: Yes.

12 BY MR. ROLLIN:

13 Q. You were describing your experience in mortgage-backed
14 securities, investments and you started to go through a series
15 of things that I think were difficult to hear. Can you take
16 those one at a time and describe just in a bullet point format
17 slowly the different experiences you have in mortgage-backed
18 securities investment.

19 THE COURT: What was your first experience?

20 THE WITNESS: Well, I started my career at Semper as
21 an MBS analyst.

22 THE COURT: MBS?

23 THE WITNESS: MBS.

24 THE COURT: MBS?

25 THE WITNESS: Agency MBS products.

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1 THE COURT: Agency MBS product is a product that has
2 no government sponsor?

3 THE WITNESS: No. It is a product that has government
4 guarantee, whether explicitly Fannie or Freddie.

5 THE COURT: We can't follow you. It has government
6 sponsorship?

7 THE WITNESS: Yes.

8 THE COURT: What is the government sponsorship?

9 THE WITNESS: Those profits that guarantee from Ginny
10 Mae, which agency --

11 THE COURT: What is Ginny Mae?

12 THE WITNESS: Government national mortgage
13 association.

14 THE COURT: Mr. Rollin, break it up, ask questions
15 till you you get it right. Otherwise, it is going to be a
16 jumble.

17 MR. ROLLIN: I am trying to walk him through.

18 THE COURT: I know. You have to interrupt the
19 witness. As soon as he says something that is not really
20 clear, stop him and ask about it and move on. Be a little
21 slower.

22 MR. ROLLIN: Okay.

23 BY MR. ROLLIN:

24 Q. You also mentioned Fannie Mae. Is that right?

25 A. Fannie Mae and Freddie Mac are the two government sponsored

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Peresechensky - direct

1 enterprises.

2 THE COURT: Those are part of the agency bonds. Are
3 all agency bonds government sponsored?

4 THE WITNESS: They're guaranteed by Ginny Mae,
5 explicit agency of the U.S., part of U.S. Treasury, or they're
6 one of the GS, GSE, one of the government sponsored enterprise,
7 Fannie or Freddie.

8 THE COURT: Some other government sponsor?

9 THE WITNESS: Yes.

10 THE COURT: That is how you define an agency bond, by
11 a bond that is sponsored by one or another government agency?

12 THE WITNESS: Yes, guaranteed by one of the government
13 agencies.

14 BY MR. ROLLIN:

15 Q. In addition to the agency mortgage-backed securities, will
16 you please tell us the next experience you have in residential
17 mortgage-backed securities.

18 A. Yes. In 2006 I started to acquire several non-agency
19 securities that did not have government guarantee. Mostly
20 prime deals, season prime deals, issued in 2003, 2004, and they
21 traded back then about two or three points back of government
22 guarantee securities.

23 THE COURT: Don't give such a complete answer. The
24 question is, in addition to the agency mortgage-backed
25 securities, what is the next experience? And you answered in

E78JTRU4

Peresechensky - direct

1 2006 you started to acquire several non-agency securities?

2 THE WITNESS: Right.

3 THE COURT: Meaning those that did not have government
4 guarantees?

5 THE WITNESS: Ah-huh.

6 THE COURT: He said there were prime deals. What is a
7 prime deal?

8 THE WITNESS: That refers to the highest quality of
9 the borrower. Particularly the FICO score is higher than 730
10 and loan to value is below 73 percent or so.

11 THE COURT: And they traded, you said, two or three
12 points back of government guarantee securities?

13 THE WITNESS: Correct.

14 THE COURT: What does that mean?

15 THE WITNESS: They traded below equivalent
16 government -- securities that -- it -- there was Fannie, 4
17 percent, TBA was trading in one of 4, then the prime securities
18 is 4 percent on the traded one or two.

19 THE COURT: That is two points below?

20 THE WITNESS: Yes.

21 BY MR. ROLLIN:

22 Q. Is that when you started trading non-agency residential
23 mortgage-backed securities?

24 A. That was my first experience was non-agency RMBS,
25 residential mortgage back securities, yes.

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Peresechensky - direct

1 Q. When did you start trading non-agency residential
2 mortgage-backed securities on a more or less full-time basis?

3 A. As the housing crisis started to unravel in 2007 and global
4 financial crisis hit in 2008, non-agency securities began to
5 trade at distressed levels. At that point, that is when our
6 main focus began to shift from agency, MBS to non-MBS, where
7 you find a lot of volume back then.

8 Q. In the course of your responsibilities as a trader in
9 non-agency mortgage-backed securities, do you have to from time
10 to time familiarize yourself with the terms of an indenture or
11 servicing agreement?

12 A. Yes.

13 Q. Do you have to know generally in your experience all of it
14 or there are certain portions that you focus your attention on?

15 MR. PICKHARDT: Objection.

16 THE COURT: Overruled.

17 A. I permanently focus on distribution of payments section and
18 loss location section of the indenture or PSA.

19 BY MR. ROLLIN:

20 Q. Do you always review either the indenture or the pooling
21 and servicing agreement, whichever might be applicable when
22 considering a trade in residential mortgage-backed securities?

23 A. Not always. Only when I'm faced with some uncertainties
24 regarding payment allocation or loss location.

25 THE COURT: Keep your voice up.

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Peresechensky - direct

1 BY MR. ROLLIN:

2 Q. Can you give me a sense, give the court a sense of
3 approximately how many residential mortgage-backed securities
4 trades you engage in every year?

5 A. Well, we compiled the statistics in 2010 and 2011, and the
6 volume of non-agency trades that I've done in those years was
7 over 2.5 billion per each year. I traded over a thousand
8 securities each year, and we haven't compiled statistics since
9 2012, so I can't attest to that so we traded many, many if not
10 thousands of agency securities.

11 Q. Before engaging in a trade, do you analyze the type of
12 market information pertaining to that bond that you previously
13 told the court about?

14 A. Yes, I try to find as much information on that particular
15 security, where it has traded in the past, what was -- if there
16 was any information, as I call it color released on that
17 security from the past, what sort of price talk.

18 Price talk refers to other broker-dealers'
19 expectations where the bonds will trade on the list, so I
20 collect all the pertinent market color for that securities
21 prior to making a purchase.

22 Q. I apologize. I'm going to go back to a previous question.

23 You said sometimes you look for indenture or PSA if
24 there is some uncertainty about the loss allocation. Let me
25 ask you, do you ever look at the prospectus supplement if there

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Peresechensky - direct

1 is some uncertainty about the loss allocation?

2 A. No, I don't. I only look at prospectus supplements for
3 descriptive reasons, look at collateral information or
4 underwriting process of originators. I don't look at any
5 crucial aspects of bond violation such as principal
6 distribution or loss location in the ProSupp.

7 Q. Why?

8 A. I understand prospective supplement to be a nonbinding
9 market material.

10 Q. How do you contrast that with a indenture?

11 A. I understand indenture should be government controlling
12 document. Intex which is industry standard cash flow, most of
13 the market participants use in the industry always models
14 securities per Intex, per indenture service. They model
15 securities for indenture as a rule.

16 Q. When were back to the question of the market data that you
17 look at for a trade, what are the -- you talked about Bloomberg
18 earlier. Let me ask you this -- what are the tools or
19 applications that you use in order to collect that market
20 information?

21 A. The tools that I use to value, perform valuation of the
22 bonds?

23 Q. To perform valuation on the bonds, yes.

24 A. We use Intex, which is industry standard cash flow model --
25 sorry -- industry standard cash flow engine. Use bond studio,

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Peresechensky - direct

1 the JP Morgan application that uses Intex as a cash flow engine
2 and we use Bloomberg as well for some deals.

3 Q. To your knowledge, are those tools that are used by other
4 investment professionals in the industry?

5 A. Sure, yeah, based on my conversation with other industry
6 professionals, the majority of them use the same tools.

7 Q. Do you regularly use those tools?

8 A. Every day.

9 Q. About how many bonds do you bid on every day?

10 A. I would say on the average at least 20 per day.

11 Q. You talked about bond studio, and I asked you to please
12 describe for the Court in a little bit more detail what bond
13 studio is.

14 A. It is a JP Morgan application that is used to value
15 non-agency securities and it relies on Intex cash flow engine
16 to run bonds.

17 Q. What is the type of information that you get from bond
18 studio?

19 A. It has information about, descriptive information about the
20 security and contains the structure of the deal. It allows
21 users to run as many assumptions as a user wants and pretty
22 much contains most of the pertinent inputs for loss allocation
23 of non-agency securities.

24 Q. How does running cash flows on bond studio compare to
25 running cash flows on Intex?

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Peresechensky - direct

1 MR. PICKHARDT: Objection, your Honor.

2 THE COURT: Overruled.

3 A. They're basically identical, like doing a Google search on
4 Desktop versus doing a Google search on iPhone. If you
5 perform -- you will get the same results whether you do a
6 search on iPhone or you do a search on a Desktop.

7 Q. Are there certain features that the Intex application
8 offers to subscribers that are different from what's available
9 to bond studio users?

10 A. Sure. Intex has a more thorough and easily accessed
11 historical information about bond cash flows. It is a lot
12 easier to integrate proprietary credit, loan level credit model
13 into Intex than bond studios. It is a lot easier to run in
14 Intex than it is bond studio.

15 Q. Do those features make Intex a more convenient application?

16 A. Yes.

17 Q. Let me ask you this: Are those features necessary for you
18 to conduct whatever due diligence you have to before you buy a
19 bond?

20 A. No, they're not.

21 Q. Let's talk about this case. Do you understand that this
22 case concerns notes in AHMIT 2005-2?

23 A. I do.

24 Q. Does Semper have holdings in that trust?

25 A. Correct. We own 26 million in 1-A-3 tranche.

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Peresechensky - direct

1 Q. When did Semper purchase those notes?

2 A. We purchased those notes on September 27th, 2012.

3 Q. Who made the decision to purchase those notes?

4 A. I did.

5 Q. What drew you to purchase the notes?

6 A. There were a fit from A risk return prospective for one of
7 the funds.

8 THE COURT: They were fit?

9 THE WITNESS: They were fit, a good fit for us.

10 THE COURT: What is a good fit?

11 THE WITNESS: They offered a pretty good yield for one
12 of our funds. We ran them at base case 12 percent yield.

13 MR. ROLLIN: You have to speak up for the court
14 reporter.

15 THE WITNESS: I ran those bonds from 10 to 12 percent
16 yields so they fit into a minus view of our securities.

17 THE COURT: Say that again.

18 THE WITNESS: I ran those bonds at around 10, 12
19 percent yield.

20 THE COURT: What does that mean, you ran those bonds?

21 THE WITNESS: I can go into assumptions? I ran
22 using --

23 THE COURT: Slowly, do it slowly.

24 THE WITNESS: -- I ran the bonds using a proprietary,
25 loan level credit model. I ran it using third party JP Morgan

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Peresechensky - direct

1 base and stress case.

2 BY MR. ROLLIN:

3 Q. You say base and stress-based model?

4 A. Yes. They have two variety of models based on housing
5 market scenario. I based base case housing scenario and stress
6 case housing scenario, and I was able to generate double digit
7 yields at my bid. So, therefore, for one of the funds, it was
8 a very good fit.

9 Some of our other funds require securities to be rated
10 at least, at least have one investment rating. The bond did
11 not have any investment grade ratings.

12 THE COURT: In your analysis, did you assume all the
13 interest would be paid?

14 THE WITNESS: Sorry?

15 THE COURT: In your analysis of a good yield, did you
16 assume that all the interest would be paid?

17 THE WITNESS: I ran the analysis on bonds at issue.

18 THE COURT: On what?

19 THE WITNESS: Bond studio, application that uses Intex
20 cash flow engine, and I put very conservative assumptions, so I
21 obtained base case yield around 10 to 12 percent.

22 THE COURT: Does that assume all interest would be
23 paid?

24 THE WITNESS: It assumes that as far as all interest,
25 it ran assumptions at projected coupons. It ran the

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1 assumptions going into the prepayment, default rates and
2 service advances. So there are a myriad of factors that go
3 into the assumptions. Those are primary factors. I don't
4 recall exactly how much interest was paid or how much principal
5 was paid, but I obtained 10 to 12 percent yield at my bid.

6 THE COURT: Did you consider the possibility that the
7 obligor would not have enough money to pay all interest on all
8 categories of notes?

9 THE WITNESS: We always consider that, the risks there
10 will be a loss. This deal was going to take a write-down, no
11 question about that. It was purchased at 47 cents on the
12 dollar. It obviously assumed that not all principal would be
13 repaid.

14 MR. ROLLIN: Your Honor, may I proceed?

15 THE COURT: Yes.

16 BY MR. ROLLIN:

17 Q. When you analyzed the bond, did you -- I am calling upon
18 the Court's question -- did you assume that although
19 write-downs were definitely going to happen, that they would
20 first be applied to the Class A-2 notes before the Class A-3
21 notes?

22 A. Well, yes. At first I pulled up the security on Blumberg.
23 This is just give a background on the purchase. It was 12-30
24 liquidation list on September 27th, came from many dealers, and
25 I pulled, when I pulled up the security on Blumberg, I looked

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Peresechensky - direct

1 at the credit enhancement level from 1-A-3 versus 1-A-2.

2 Q. Stop. You looked at the credit enhancement levels on
3 Blumberg?

4 A. Ah-huh. Credit enhancement refers to how much credit
5 protection from the junior tranches each tranche passed. 1-A-3
6 had 35 percent of credit enhancement, meaning approximately you
7 can take 35 percent of the losses before you start getting
8 write-downs on the 1-A-3 tranche. 1-A-2 tranche had at that
9 time I believe it had around 10 percent credit enhancement.
10 That indicated to me 1-A-3 was the senior bond on Blumberg.

11 Now, I did notice there was abnormality nomenclature
12 because in option arm deals, I looked at prior to this AHMIT
13 bond. Typically, 1-A-2 is senior mass and --

14 Q. Let me stop you there for a moment. You said the term
15 option arm?

16 A. Yes.

17 Q. What does option arm stand for?

18 A. Option arms refer to the collateral type where the interest
19 is basically -- it is based on some Intex, whatever, whether it
20 is treasury CMT or LIBOR, and the initial payment is actually
21 below the full, the full Intex rate. There is negative
22 amortization going on in the principal.

23 Q. Is this just a type of mortgage loan?

24 A. Yes, it is a type of mortgage loan.

25 Q. You mentioned also in your previous answer, you used the

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Peresechensky - direct

1 term mez. What does mez mean?

2 A. Mez refers to subordinate to senior. It is not a senior
3 tranche.

4 Q. You were describing A-3 as a senior mez and A-2 as a junior
5 mez. I used jargon myself in the question. I apologize.

6 Will you please describe what you mean when you looked
7 at the anomaly and nomenclature with respect to the relative
8 priority of A-2 and A-3 classes.

9 A. Yes. From the Bloomberg page, 1-A-3 had higher level
10 credit enhancement than 1-A-2, confirming it was senior to
11 1-A-2, meaning the losses would hit 1-A-2 before they hit
12 1-A-3.

13 Q. I will stop you there. What did you do in response to
14 seeing the anomaly in nomenclature?

15 A. I must add at the same time I look at credit enhancement, I
16 looked at the rating on the same page, and the rating for 1-A-3
17 was higher than 1-A-2 for the supporting that 1-A-3 was a
18 senior tranche.

19 Q. By "rating," what do you mean by that?

20 A. The rating from S&P and Moody's.

21 Q. Do I understand correctly that the S&P and Moody's rate
22 each tranche. Is that right?

23 A. Yes. Most S&P and Moody's are rating each tranche.

24 Q. Is there something about what you saw in the ratings that
25 led you to believe that either the A-3 was -- the A-3, what

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Peresechensky - direct

1 their relative seniority was?

2 A. Yes, A-3 had higher ratings, and higher ratings allude to
3 the fact it is senior to the fact it is lower ratings. The
4 bonds are from the same group.

5 THE COURT: Why did you consider it anomalous?

6 THE WITNESS: I noticed the anomaly because in my
7 previous experience when I looked at other options on deals --
8 and I haven't looked at many -- there were three tranches in a
9 stack. It could be 1-A-1, 1 and 2, or it could be named 1-A-1,
10 1-A-2 or 1-A-3, or some other nomenclature such as A-1-A,
11 A-1-B, A-1-C. The first tranche, the A-1 is a senior bond, and
12 the second tranche is, A-2 is senior mez and the third tranche,
13 A-3 is a junior mez.

14 THE COURT: The last word?

15 THE WITNESS: Junior Mez.

16 THE COURT: What is the top one?

17 THE WITNESS: The first tranche, A-1 is a senior bond.

18 THE COURT: Senior bond?

19 THE WITNESS: Yes.

20 THE COURT: The second one?

21 THE WITNESS: The second one is senior mezzanine.

22 THE COURT: Mezzanine?

23 THE WITNESS: Yes, mezzanine, and the third is a
24 junior mezzanine.

25 THE COURT: Junior mezzanine?

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1 THE WITNESS: Yes.

2 THE COURT: You would expect this to what? How would
3 you name this? What is the nomenclature for the senior bond?

4 THE WITNESS: The nomenclature varies across the
5 deals. Some deals are 1-A-1 and some deals would be 1-A-2 and
6 3. That is one of the nomenclatures encountered in option arm
7 deals. In prime, it could be an incomplete series in
8 sequential order where 1-A-4 or 1-A-3 could be senior to 1-A-2.

9 In prime and Alt-A, a type of collateral deal.

10 THE COURT: Don't use abbreviations. Use the big
11 word.

12 THE WITNESS: Prime loans, loans to prime buyers --
13 less qualified buyers lower.

14 THE COURT: Less qualified?

15 THE WITNESS: Less qualified by credit scores, the
16 credit.

17 THE COURT: What is that called?

18 THE WITNESS: Credit score, FICO, the FICO score.

19 THE COURT: What kind of score?

20 THE WITNESS: FICO.

21 MR. ROLLIN: F I C O.

22 THE WITNESS: F I C O. Alt-A loans have --

23 THE COURT: What kind?

24 THE WITNESS: A L T dash A, higher Ltd relative to --
25 loan-to-value relative to prime deals, and like I said, it

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1 might have less robust documentation. You might have some
2 missing documents.

3 THE COURT: In your nomenclature, what is customary,
4 the lower number being more secure or the lower number being
5 less secure?

6 THE WITNESS: In my experience in option arm deals --
7 and I haven't --

8 THE COURT: Option arm?

9 THE WITNESS: Option arm, yes, option arm is a type of
10 loan and this was an option arm deal.

11 In my experience, the lower number corresponds to the
12 more senior bond. In prime Alt-A deals, it varies. It can be
13 reverse sequential order.

14 BY MR. ROLLIN:

15 Q. Does that mean that the nomenclature doesn't necessarily
16 define seniority in mortgage-backed securities?

17 MR. PICKHARDT: Objection, your Honor.

18 THE COURT: Overruled.

19 A. No, not at all. Obviously, I was just -- I took account of
20 that. I noticed it was somewhat abnormal from other deals I
21 looked at. Therefore, I wanted to dig further and perform
22 further due diligence on the security.

23 Q. What did you do?

24 A. So after I looked at the credit enhancement ratings, I ran
25 both 1-A-2 and 1-A-3 on both bond studio antics and it was

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Peresechensky - direct

1 Bloomberg to ascertain the seniority of 1-A-3.

2 When I ran them on the same assumptions at the same
3 price, I got the high yield for 1-A-3 tranche which confirms
4 the seniority of 1-A-3 tranche. Beyond that, when I looked at
5 the Bloomberg page and typed in CF to pull up all the
6 documents, I trust the trust indenture there on Bloomberg and I
7 opened the trust indenture in order to verify the loss
8 allocation language.

9 I looked at the loss allocation language in the trust
10 indenture, I believe it was Section 3.38 and it was clear,
11 unambiguously stated the losses is responsible -- -- the losses
12 will be allocated to 1-A-2 and 1-A-3 in that order. So it
13 unequivocally confirmed in my mind that 1-A-3 was a senior
14 tranche.

15 BY MR. ROLLIN:

16 Q. Did you look at any other documents related to the
17 underlying transaction at that time?

18 A. No. My main concern was to ascertain the seniority of
19 1-A-3 at that time and I looked at the controlling government
20 document indenture to verify the loss allocation language.

21 Q. Did you then purchase your A-3 notes?

22 A. So, yes, I ran it on bond studio using a proprietary credit
23 loan level model and I ran JP Morgan's credit model base case
24 and stress case, and I bid where I was comfortable bidding it,
25 and two hours later I was told I could buy bonds. I initially

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1 bid 47 and a quarter and 47 A ticks and paid A ticks commission
2 to the counter-party through who I bought this security.

3 Q. Let me break that up a little bit.

4 You said you paid 47 and a quarter. Can you --

5 A. That was my bid. A competitive bid list process where
6 seller, some other investor contacted a number of
7 broker-dealers and sent them a list of bonds they would like to
8 sell, and the broker-dealers distributed the list to end
9 accounts and investors like myself and others, and they
10 collected the bids, and the highest bids were submitted to the
11 seller, and the seller then proceeded to award the bonds.

12 Q. Okay. Explain the pricing terminology that you used. Did
13 you pay 47 and a half?

14 A. Yes, I paid 47 and a half for the bond.

15 Q. Does that mean 47 and a half percent of the then current
16 face of the bond?

17 A. Yes, correct, 47 and a half percent of the current face of
18 the bond.

19 THE COURT: Meaning you had 52 and a half percent
20 discount from par?

21 THE WITNESS: Yes, from par.

22 BY MR. ROLLIN:

23 Q. At any time prior --

24 THE COURT: Is that considered junk?

25 THE WITNESS: The bond was going to take losses, so I

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Peresechensky - direct

1 ran it around 10, 12 percent and base case 4 percent of stress
2 case.

3 THE COURT: 10 to 12 percent is a good yield?

4 THE WITNESS: The ratings were certainly below
5 investment ratings. The ratings was Double B or Triple C so
6 yeah, it was junk ratings.

7 BY MR. ROLLIN:

8 Q. Were the ratings higher than the ratings for the A-2 class
9 at that time?

10 A. A-2 had lower ratings than A-3. I must, if you want to
11 know more about diligence, I also looked at, like I said, the
12 price history.

13 Q. Please do describe that. I was about to ask it, but go
14 ahead.

15 A. Like I said, before I put a bid, I look at any price
16 information I have on the bond. So I went back and looked at
17 my notes and Bloomberg and messages on both 1-A-3 and 1-A-2 and
18 I noticed that back in February, on February 23rd, there was 50
19 million original face of 1-A-3 tranche out for the bid and I
20 was posting --

21 Q. Give the court reporter a second to catch up.

22 MR. PICKHARDT: I object on hearsay grounds, your
23 Honor.

24 THE COURT: Overruled. He is describing what he did.
25 It is not hearsay.

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1 A. The price talk on that particular list in February, the
2 price talk refers to broker-dealers, traders' expectations of
3 where the bonds will trade on the list, range from 40 to low to
4 mid-40, so you can see from 40 to 43.

5 THE COURT: For The A-2?

6 THE WITNESS: No. For A-3s. I am referring to the
7 sale, bid list for A-3 and on February 23rd.

8 THE COURT: Okay.

9 BY MR. ROLLIN:

10 Q. Of which year?

11 A. 2012. That was bid list on February 23rd, 2012, 50 million
12 was offered for the bid. The price talked ranged from 40 to
13 mid-40's. On the flex day I saw a post the bond traded and
14 there was offer out there stemming from that sale at 39.

15 Now, I don't know where the bond traded, but given the
16 offer was 39 and IDC, a pricing service that monitors the
17 prices of non-agency securities. Given the IDC price went up
18 from, I don't remember where, to 37 and a half in February, it
19 leads me to believe that the bond traded somewhere around 37
20 and a half on February 23rd, 2012.

21 So that was also one of the inputs into my evaluation
22 of this security, and on September 27th on the day I purchased
23 1-A-3 tranche.

24 Q. Is the price talk and other market color that you received
25 the type of information that you have to rely on, was it the

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Peresechensky - direct

1 type of information you rely on in making your investment
2 decisions?

3 A. It is one of the factors that I look, I consider when
4 making an investment decision for sure.

5 Q. You started to describe due diligence.

6 Were there any other things that you did in addition
7 to those which you've already told the court about before
8 purchasing the A-2 -- sorry -- A-3 notes?

9 A. Yes. I also noticed that the A-2, big block of A-2 traded
10 early that month, early in September, and there was a post that
11 the A-2 traded in low to mid-30's.

12 Q. At a lower price than where you saw market color for?

13 A. Yes, at a lower price than where I saw market color for
14 A-3.

15 Q. Was there significance in that fact to you?

16 A. Yes. It just confirmed the seniority of A-3, the market
17 looked at the A-3 as a senior bond relative to A-2.

18 THE COURT: Would it have been a good strategy to buy
19 both A-2s and A-3s?

20 THE WITNESS: I will get to that.

21 THE COURT: You have to do it? I will wait.

22 THE WITNESS: Okay.

23 THE COURT: You can answer now. Would it have been a
24 good strategy to buy both A-2 and A-3?

25 THE WITNESS: The block of A-2 traded was way too big

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1 for us. We couldn't really buy because it was over our -- we
2 have a volume risk limit where key can't put so much
3 concentration into one Q-sip. It was way too big for us
4 because our fund was only a hundred million at that point. It
5 wasn't proper.

6 THE COURT: What was being offered?

7 THE WITNESS: It wasn't being offered. It was on a
8 list.

9 THE COURT: Both A-2 and A-3?

10 THE WITNESS: The A-2 was on a list in September,
11 early September.

12 BY MR. ROLLIN:

13 Q. For clarity, are these are on different lists?

14 A. Yes, from different list.

15 Q. The A-2 appeared at one time on one?

16 THE COURT: The A-2 was on one list in September 2012
17 and the A-3 was on a different list, and when was the different
18 list?

19 THE WITNESS: February 23rd, 2012, I believe, 50
20 million.

21 THE COURT: February 23rd, what year?

22 THE WITNESS: 2012.

23 (Continued on next page)
24
25

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1 THE COURT: Also 2012?

2 THE WITNESS: No, I must preface that by stating that
3 the market --

4 THE COURT: Let's stay with one thing. You said that
5 A2 was offered September 2012?

6 THE WITNESS: It traded September 2012.

7 THE COURT: Traded.

8 THE WITNESS: Yes.

9 THE COURT: And you said A-3 was offered
10 February 23rd, 2012.

11 THE WITNESS: Well, first --

12 THE COURT: Is it 2012 or 2013?

13 THE WITNESS: 2012, but it -- 50 million was on a bid
14 list. It traded on a bid list. I wasn't -- there was no
15 caller information post-trade, but the next day there was an
16 offer on that bond at 39.

17 THE COURT: The next day there was an offer on that
18 bond at 39?

19 THE WITNESS: Yes.

20 THE COURT: What bond was that bond?

21 THE WITNESS: A-3.

22 THE COURT: So if you had the neighbor buy both A-2
23 and A-3 within your so-called appetite limits, would it have
24 been a good idea to buy both?

25 THE WITNESS: I think, I mean, depending on the price,

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1 yeah, I mean, I think it -- you know, there are -- you can buy
2 a lot of -- you can buy many potential investments, and I
3 actually was very close to buying A-2 recently and I can
4 comment on that.

5 THE COURT: So both have their potential upsides and
6 downsides?

7 THE WITNESS: Yes, but I must say that I ran both of
8 these bonds in the indenture. I didn't give any weight to -- I
9 mean, I'll get to it later, but I basically ran them in the
10 Intex the way the model is.

11 THE COURT: You said that you valued them -- you
12 evaluated them against the indenture?

13 THE WITNESS: Yes.

14 THE COURT: And not against the Pro Supp.

15 THE WITNESS: Yes, by default Intex model --

16 THE COURT: Right.

17 THE WITNESS: Exactly, yes.

18 THE COURT: Okay.

19 THE WITNESS: So I must also say --

20 THE COURT: Okay, stop. You're finished. Wait for
21 another question.

22 BY MR. ROLLIN:

23 Q. I want to follow up on the Court's question, I think.

24 Have you seen the prices, based on the available
25 market information, for both the A-2 and the A classes rise

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1 over time?

2 A. Yes. There was a -- there was a significant rally from
3 February 2012 to September of 2012. The market rallied a lot.
4 I would say those type of cash loads to option are mezzanine
5 tranches rise anywhere from 15 to 20 percent from February 2012
6 to September of 2012.

7 Q. Now, when you won that September 27th, 2012, bid, did you
8 find out whether there was a -- or what the second-best offer
9 was?

10 A. Yes. So the second best bid or in the market refers to --
11 in our space, refers as a cover, to cover, it's called a cover
12 bid, it's the second best bid. Nomura came back to me and told
13 me that I had a very tight cover at 47.

14 Q. What does a "tight cover" mean?

15 A. Well, tight it means there's not much distance between the
16 winning bid and the second-best bid because my bid was 47 and a
17 quarter, and I paid Nomura eight-six commission and the
18 second-best bid was 47.

19 Q. What is the significance of that fact to you?

20 A. Well, that somebody else thought the bonds were worth
21 around the same price as I did.

22 Q. When you bought -- Are you now aware of a discrepancy
23 between the indenture and the Prospectus Supplement concerning
24 the allocation of realized losses?

25 A. Oh, yes.

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1 THE COURT: Were you aware, at the time you were
2 pricing them, of the discrepancy?

3 THE WITNESS: At the time of purchase? No.

4 THE COURT: You were not?

5 THE WITNESS: No.

6 BY MR. ROLLIN:

7 Q. When did you first find out about the discrepancy?

8 A. Okay. So I find out about the discrepancy the next day.

9 Q. How did you find out about the discrepancy?

10 A. I was having a conversation with a trader at Mesirow
11 Financial, Ali Haghighat. I always call him Ali, I'm sorry.

12 Q. I will try to spell the last name. Tell me if you think
13 this is the correct spelling.

14 THE COURT: Ali somebody.

15 A. I can spell his last name. I'm just not really good at
16 pronouncing it.

17 MR. ROLLIN: Ali somebody is fine, if it's fine with
18 the Court.

19 THE COURT: Spell the last name.

20 THE WITNESS: H-a-g-h-i-g-h-a-t, Haghighat.

21 BY MR. ROLLIN:

22 Q. And what did Ali H tell you?

23 A. So we had a conversation, and we usually talk on a regular
24 basis where we discuss different bonds, what kind of --

25 Q. Nice and slow, please.

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1 A. Yeah, and so we had the conversation we usually discuss
2 what type of bonds we buy throughout the week, and I told him
3 that I bought this AHM bond. And he took a look at it,
4 analyzed the collateral, came back to me and said, yes, he
5 likes the bond, where can I sell the bond to him. And I said,
6 well --

7 Q. Let me stop you. Does that mean he was asking you if he
8 could buy the bond from you that you had just bought?

9 A. Yes. He was asking me where he could buy the bonds from me
10 the day after I bought them.

11 Q. Okay. Continue about that conversation.

12 A. So I told him that I just bought them and, you know, I'm
13 typically a long-term investor, but I'm not married to the
14 price, and in order for me to sell the bond, I would need at
15 least 50 to sell the bond.

16 He came back and said the best he can do in this AHM
17 bond was 49 and a half, and I said, well, you know, given this
18 bid came from you and I value your opinion, we do a lot of
19 trading, I will sell it to you at 49 and a half on that date.

20 Q. Okay. Was that the end of the conversation?

21 A. No, no. About, I'd say, ten minutes later, he said -- you
22 know, I don't remember if it was the same phone call or a
23 different phone call. He comes back and says, Boris, I need to
24 pull my bid. The bid is out. There's some problems with this
25 bond.

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1 Q. And what problem did he tell you there was with the bond?

2 A. And then he proceeded to explain that there was a
3 difference between -- a difference in allocation -- loss
4 allocation between the indenture and the Pro Supp.

5 Q. And is that the first time you learned of the discrepancy?

6 A. Yes.

7 Q. And you said he pulled his bid. Does that mean that he
8 asked --

9 A. He asked to cancel the trade. So I said -- you know, I
10 told him that he can be done at 49 and a half, and we proceeded
11 to discuss some other matter, and then ten minutes later, he
12 asked to retract his bid and cancel the trade.

13 Q. You mentioned a moment ago --

14 THE COURT: Did you agree?

15 THE WITNESS: Yes. I mean, out of -- you know, I have
16 very good relationship with Ali. I value his opinion. We have
17 mutual respect. I see him as a person with a lot of integrity,
18 and given the circumstances of this transaction, that he came
19 back ten minutes right after he said it could be done, he could
20 buy -- he wants to buy at 49 and a half, we agree on a trade.
21 In light of these circumstances, I thought it was the proper
22 thing to let him out of the trade.

23 BY MR. ROLLIN:

24 Q. You used the phrase "can be done at" and then a price?

25 A. Yes.

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1 Q. Is that a term of art, "can be done at"?

2 A. Yeah, so typically when, you know, people say "done," in
3 our space, in the trading space, people say done means that
4 they agree to the terms of the transactions.

5 Q. That's the -- is that the handshake at the end?

6 A. Yes. It's basically a handshake, so to speak. The trade
7 is consummated.

8 Q. Did you have to let him out?

9 A. You know, it's not industry standard to let people out on
10 the trade once they both parties agree on the terms; so I
11 didn't have to let him out, but I felt it was the proper thing
12 for me to do.

13 Q. Did you ever go back to Nomura and ask them to let you out
14 of the purchase that you had just made?

15 A. No.

16 Q. Why not?

17 A. It would have been impossible to cancel, first of all,
18 because it was already a day after the trade was done. So
19 there's zero chance that they would have canceled the trade.

20 And second of all, I was convinced that given the
21 indenture was the governing document, that the loss allocation
22 was going to apply per indenture, and I wanted to take the next
23 step in my due diligence just to verify it and verify it with
24 the trustee securities administrator.

25 Q. Okay. Let me help break that down a little bit. You

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1 learned from Ali of the discrepancy, correct?

2 A. Yes.

3 Q. And then you -- what do you do next in relation to the
4 discrepancy?

5 A. My next step was to talk to the trustee or securities
6 administrators to ascertain whether they're going to file the
7 indenture or the Prospectus Supplement with regard to
8 allocation of losses.

9 Q. And what specifically -- break it down step by step. What
10 is the first thing that you did in reaching out to the trustee
11 or the securities administrator?

12 A. I believe I called the trustee first, and they referred me
13 to -- they said it's Wells Fargo's responsibility to allocate
14 the losses; so Deutsche Bank referred me to Wells Fargo. I had
15 to register as a note holder in order to speak to somebody at
16 Wells Fargo, and then they referred me to the person who's
17 responsible for monitoring this deal.

18 And then, I believe, I left a voicemail asking them to
19 clarify the loss allocation language, what document they were
20 going to follow for this deal.

21 Q. Was this communication with the securities administrator in
22 writing?

23 A. I don't -- I believe I left a voicemail or I had a phone
24 conversation; I can't recall right now.

25 Q. Were there subsequent conversations on this topic with the

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1 securities administrator that were in writing?

2 A. Absolutely.

3 MR. ROLLIN: I'm going to bring a copy up to the
4 witness in just a moment. May I approach?

5 THE COURT: Yes.

6 Q. I've placed before you a document marked TXV. Do you
7 recognize TXV?

8 A. Yes.

9 Q. Will you please tell the Court what TXV is?

10 A. It's an e-mail from Brant Warble at Wells Fargo to myself
11 related to the fact that Wells Fargo is going to file an
12 indenture to allocate losses, and they are going to allocate
13 losses to 1-A-2 before they are going to allocate losses to
14 1-A-3.

15 Q. Just so we get a sequence, is the first e-mail in time the
16 one that's found on Page 2 of the exhibit at the bottom? If
17 you look at the very bottom in the middle it says TXV --

18 A. Yes, yes.

19 Q. So is the first in time e-mail the one from Wells Fargo to
20 you --

21 A. Mmm, hmm.

22 Q. -- at the bottom of Page 2?

23 A. Yes.

24 Q. And is your follow-up e-mail to Wells Fargo at the top of
25 Page 2?

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1 A. Yes.

2 Q. And is there a response to you at the top of Page 1?

3 A. Correct.

4 Q. Is that the last of -- is that the entire conversation with
5 Wells Fargo on this topic at that time?

6 A. As far as I recall, yes.

7 Q. And what was your -- what did you come away with, with
8 respect to how Wells Fargo was going to allocate the realized
9 losses, after having received Exhibit TXV?

10 A. Well, I was certain they were going to file an indenture,
11 and I -- when asked about what -- I mean, they said their going
12 to file an indenture absent an amendment. And I when I asked
13 them what would trigger an amendment, they said the method
14 available to conform the indenture in this case would therefore
15 be -- they said the method available to conform the indenture
16 in this case will, therefore, be an amendment with consent of a
17 hundred percent of the 1-A-3 holders because the 1-A-3
18 holders --

19 THE COURT: Slow.

20 A. -- because the 1-A-3 holders would be directly and
21 adversely affected by an amendment to conform the indenture to
22 the Pro Supp.

23 Q. Did Wells Fargo communicate anything to you that indicated
24 at this time there was a possibility that they might not follow
25 the indenture?

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1 A. Nothing of that sort was ever -- was communicated to me.

2 THE COURT: This was after you bought the bonds,
3 right?

4 THE WITNESS: Yes.

5 BY MR. ROLLIN:

6 Q. Did you rely on the information communicated to you in
7 Exhibit TXV in deciding to hold the bonds?

8 MR. PICKHARDT: Objection, your Honor.

9 THE COURT: I'll allow it. You can answer it.

10 THE WITNESS: I can answer?

11 THE COURT: Yes.

12 A. Absolutely I relied on it.

13 THE COURT: What was the price at that time?

14 THE WITNESS: I'm sorry?

15 THE COURT: What was the price of the bonds at that
16 time?

17 THE WITNESS: That was just a few days after the
18 purchased. I purchased the bond at 47 and a half back in
19 September of 2012.

20 THE COURT: And you already had a bid of 49 and a
21 half?

22 THE WITNESS: Yes, I had -- the next day I had a bid
23 of 49 and a half from a Mesirow trader, but he pulled his bid.

24 THE COURT: Right. And did you receive any other
25 bids?

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1 THE WITNESS: Since?

2 THE COURT: Around that time.

3 THE WITNESS: No, not in 2012.

4 THE COURT: Did you shop for any bids?

5 THE WITNESS: No. We decided to hold the bond, given
6 the certainty related to the loss allocation provision. It was
7 going to be a long-term investment for us. As a matter of
8 fact, we put it on the repo facility. We put it on the repo
9 facility.

10 BY MR. ROLLIN:

11 Q. What does repo mean?

12 A. Where basically we --

13 THE COURT: You lend the bond to somebody else?

14 THE WITNESS: Yeah, you lended -- you pledged this
15 bond and got cash from a party.

16 BY MR. ROLLIN:

17 Q. Please spell that last word?

18 THE COURT: Did there come a time when you received
19 notice that the Wells Fargo was seeking to get advice of the
20 Court on how to deal with the question of loss priorities
21 between A-2 and A-3?

22 THE WITNESS: Do I -- I mean, the next communication
23 from Wells Fargo was the consent solicitation form.

24 THE COURT: Was the what?

25 THE WITNESS: The next communication from Wells Fargo

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1 to us was --

2 THE COURT: Louder, louder. Face the clock.

3 THE WITNESS: Sorry. The next communication from
4 Wells Fargo to us, Semper, was consent solicitation form. I
5 believe it was filed in May of 2013.

6 THE COURT: You didn't consent?

7 THE WITNESS: Yeah. We objected to that.

8 THE COURT: And did there come a time when you got
9 advice or you heard in some fashion that Wells Fargo was
10 seeking to get a judicial interpretation of what its
11 responsibilities for loss allocation should be between A-2 and
12 A-3 notes?

13 THE WITNESS: I'm sorry, could you repeat?

14 MR. ROLLIN: Yes, if I may?

15 THE COURT: Mr. Rollin will do it.

16 BY MR. ROLLIN:

17 Q. When did you first hear about any legal proceedings that --
18 concerning the loss allocation?

19 A. The trust indenture petition?

20 Q. Yes.

21 A. Yeah, I think we found out about it in January of this
22 year, 2014.

23 Q. Now, when you first found out --

24 THE COURT: What was the price of the bond then?

25 THE WITNESS: The last observable price on 1-A-3 was

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1 low 70s, 71.

2 THE COURT: So would that have been -- if you sold at
3 that time, would that have been profitable?

4 THE WITNESS: It would have been.

5 THE COURT: Then you knew that you could no longer
6 rely on what Wells Fargo told you in this e-mail chain, TXV,
7 dated in October 2012?

8 THE WITNESS: Yeah, I mean, we were very upset by
9 Wells Fargo backtracking on this statement.

10 THE COURT: But you could have gotten out then and
11 made a profit?

12 THE WITNESS: Well, we received a bid of 71 in
13 November of 2013, and we received another indication in
14 December of 2013, prior to the trust indenture petition being
15 filed in January.

16 THE COURT: And after you got notice of that, you
17 could have sold also and made a profit.

18 THE WITNESS: Afterwards? After the proceedings
19 started?

20 THE COURT: Yes.

21 THE WITNESS: Well, I didn't -- you know, I didn't
22 even entertain the idea of trying to sell the bond because now
23 the bond was in litigation. I didn't want to put the bond out
24 there and sell it to somebody who would then find out the bond
25 was in litigation. It was not proper from ethical --

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1 THE COURT: Everybody knew it was in litigation.

2 THE WITNESS: Not us.

3 THE COURT: Well, you got notice.

4 THE WITNESS: I understand we got notice, but now the
5 uncertainty has hit the bond, the value of the bond became
6 impaired, after this trust indenture petition was filed in
7 January. The volume became impaired because of its
8 uncertainty. The bond was in litigation, so I would have to
9 disclose to a prospective buyer that the bond was in
10 litigation, upon that disclosure, prospective buyers would back
11 away from purchasing the bond.

12 THE COURT: It might or might not, but you said at
13 that time the price was in the 70s.

14 THE WITNESS: Prior to the trust indenture petition.

15 THE COURT: And after?

16 THE WITNESS: We didn't test the market to find out
17 because now the litigation started.

18 BY MR. ROLLIN:

19 Q. Do you believe the litigation has impaired the
20 marketability of the bond?

21 A. Absolutely.

22 Q. Would that affect the price of the bond?

23 A. I --

24 MR. PICKHARDT: Objection, your Honor.

25 THE COURT: Overruled.

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1 A. I think it damages liquidity of bond, it affects the price
2 of bond. In fact, our plan was, basically, we wanted to get 75
3 for this bond back in November or December, and we didn't want
4 to sell it at 71, the bid we received. And our plan was to
5 wait at least until January or February of this year when we
6 felt the market is going to rally a bit more, as funds get more
7 money and the market goes for those January or first-quarter
8 effect and the price rises. And then we felt we could sell the
9 security at 75 or above, and this trust indenture petition just
10 pulled the rug out of us and caused us tremendous amount of
11 pain and harm to us.

12 MR. ROLLIN: I have no further questions at this time,
13 your Honor.

14 THE COURT: Cross?

15 MR. PICKHARDT: Your Honor, may I approach with
16 deposition transcripts?

17 THE COURT: Yes.

18 MR. PICKHARDT: Your Honor, we have one for the Court
19 and one for the witness.

20 THE COURT: Okay. The witness doesn't really need it.

21 MR. PICKHARDT: Okay, your Honor. I may ask him to
22 read sections; so he may like it for his reference. If I read
23 sections of his deposition transcript to him, he may want --

24 THE COURT: You read the section, you ask him if he
25 testified at a certain place, did you hear this question, did

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1 you give this answer.

2 MR. PICKHARDT: Okay, your Honor.

3 CROSS-EXAMINATION

4 BY MR. PICKHARDT:

5 Q. Good afternoon, Mr. Peresechensky. Mr. Peresechensky, you
6 testified that Semper was trading about two-and-a-half billion
7 dollars in residential mortgage-backed securities per year; is
8 that right?

9 A. In 2010 and 2011.

10 THE COURT: What?

11 THE WITNESS: Huh?

12 THE COURT: What? Say it again.

13 THE WITNESS: In 2010 and 2011 our volume was about
14 two-and-a-half billion dollars.

15 BY MR. PICKHARDT:

16 Q. And you were still doing very significant volume in 2012
17 when you purchased the 1-A-3 notes in this deal, right?

18 A. Yes.

19 Q. Now, you provided detailed testimony about the due
20 diligence that you did prior to making this purchase. Isn't it
21 correct that you have no documentary record of what due
22 diligence you did or didn't do at that time?

23 A. Yeah, we didn't save our run assumptions from that time.
24 From the time of the purchase on 27, we didn't save the run.

25 Q. So the only evidence we have as to what you did prior to

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1 when you made your purchase is what you recall in your head and
2 the words that are coming from your mouth, right?

3 A. Well, I basically related how I approached all these
4 purchases.

5 THE COURT: So the answer is yes?

6 THE WITNESS: Yeah, I mean, yes. It's --

7 THE COURT: From what you remember?

8 THE WITNESS: It's from what I remember, from how I
9 approach --

10 THE COURT: So the answer is yes.

11 THE WITNESS: Okay.

12 BY MR. PICKHARDT:

13 Q. You referred to having noticed, prior to when you
14 purchased, a nomenclature abnormality, and I want to make sure
15 I understand that. This type of deal was something that you
16 referred to as an option-arm deal, which is the type of
17 collateral that supports these notes; is that right?

18 A. Yes.

19 Q. And you had seen other option-arm deals, right?

20 A. Yes. I haven't been active in option arms space, but I've
21 seen other option-arm deals.

22 THE COURT: Try to answer the question and not
23 volunteer more.

24 THE WITNESS: Okay.

25 THE COURT: The more a witness volunteers, the longer

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1 the examination becomes.

2 THE WITNESS: Okay.

3 THE COURT: You want to end it? Answer concisely.

4 Okay?

5 THE WITNESS: Okay.

6 BY MR. PICKHARDT:

7 Q. Now, the other option-arm deals that you had seen, with
8 respect to the senior notes, the seniority had always gone,
9 numerically, one, two, three, right?

10 A. In options deals that I've looked at, yes, that was the
11 case. The seniority was --

12 Q. That's all I asked.

13 A. Yes, the top tranche would be senior, the second would be
14 senior mezz and the third would be junior mezz.

15 Q. And you saw this deal, and you saw the seniority went one,
16 three, two, right?

17 A. Correct.

18 Q. And that set off an alarm bell in your head saying this is
19 a nomenclature abnormality, and that's your words, right?

20 A. Yes.

21 Q. Now, you didn't do anything to investigate why there was a
22 nomenclature abnormality, did you, Mr. Peresechensky?

23 A. My next step was to pull up the indenture and look at the
24 loss allocation language in the indenture. I understood
25 indenture to be the governing, controlling document and the

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1 indenture unambiguously stated that the 1-A-3 was the senior
2 bond relative to 1-A-2.

3 Q. You're not a lawyer, sir, right?

4 A. I'm not.

5 Q. And my question is not whether you looked at the indenture.
6 My question was did you undertake any investigation to try to
7 figure out why this deal went one, three, two?

8 THE COURT: He answered. He said he looked at the
9 indenture.

10 Q. You didn't do anything else to try to investigate that,
11 correct?

12 A. It's not my job to guess --

13 THE COURT: Don't argue. The answer is yes or no.

14 A. I'm sorry. No.

15 Q. You didn't do anything else. And the indenture didn't give
16 you an answer as to why this was different than other deals,
17 right?

18 A. Right.

19 Q. Now, you also testified that you looked on Bloomberg
20 related to this deal, right?

21 A. Yes.

22 Q. And one of the things that you are testifying, from your
23 recollection, that you saw at that time on Bloomberg was a copy
24 of the indenture for this residential mortgage-backed security
25 transaction, right?

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1 A. Yes.

2 Q. And you testified that you downloaded that indenture, you
3 opened it up and you went to section 3.38 and diligently read
4 through that section; that's your testimony, right?

5 A. Right.

6 Q. That was unusual for an indenture to be on Bloomberg,
7 wasn't it, Mr. Peresechensky?

8 A. I have not seen many PSA or indentures. Typically, I would
9 pull them up from SEC website, or now we pull them up from
10 Intex.

11 Q. And you have testified to having traded over five billion
12 dollars --

13 A. Right.

14 Q. -- in RMBS, and sitting here today, you can't identify a
15 single other instance in which you observed an indenture for an
16 RMBS security on Bloomberg, right?

17 A. Again, I have not looked for legal documents on Bloomberg
18 in a long time. And when I needed to look at the indenture, I
19 would pull them out from the SEC website or now, I pull them
20 out from Intex.

21 THE COURT: It's easier to take it from Bloomberg?

22 THE WITNESS: Yeah, it's much easier.

23 THE COURT: Because it's hyperlinked?

24 THE WITNESS: Yeah, it's just a click away. Again, I
25 don't really recall --

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1 THE COURT: So the testimony is that he doesn't
2 usually look on Bloomberg, but where he found it, it's easier
3 so he did it that way.

4 THE WITNESS: Yeah.

5 THE COURT: Right?

6 THE WITNESS: Yeah. It was ready and available; so I
7 just pulled it up and the trust indenture from Bloomberg and
8 look at it.

9 THE COURT: There it was.

10 BY MR. PICKHARDT:

11 Q. I just want to understand that in no other instance over
12 your career in billions of dollars of RMBS transactions, have
13 you ever seen an indenture that you observed on Bloomberg
14 before?

15 A. I don't really recall, no.

16 Q. Now, you also testified that you looked at the ratings for
17 the 1-A-3 bonds and the 1-A-2 bonds prior to when you
18 purchased, right?

19 A. Yes.

20 Q. And you looked at the ratings on Bloomberg --

21 A. Yes.

22 Q. -- is that right? And you pulled up on your screen two
23 different sets of ratings. You pulled up the ratings for the
24 1-A-3 bonds and the 1-A-2 bonds and had them both sitting up on
25 your screen at the same time so you could compare them; is that

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1 right?

2 A. Yes.

3 MR. PICKHARDT: Your Honor, may I approach?

4 THE COURT: You don't have to ask me. Just do it, as
5 long as you don't abuse it.

6 Q. Mr. Peresechensky, I am showing you two exhibits that have
7 been marked as Exhibit TX251 and Exhibit TX252, which were
8 produced by your company in the context of this litigation.

9 A. Okay.

10 Q. If you would, first focus on TX252.

11 A. Yes.

12 THE COURT: Yes.

13 Q. Do you recognize this as showing the Bloomberg screens that
14 you pulled up next to each other at the time that you reviewed
15 the ratings?

16 A. I don't recall them being exact Bloomberg screens that I
17 looked at, at the time that I pulled up ratings. I kind of
18 recall that they were being on the same page as a credit
19 enhancement, the MTCS page. That's something that they would
20 show the credit enhancement of the bond. I don't recall the
21 exact same -- the exact screens.

22 Q. Now, the screens that you pulled up, similar to what Semper
23 has produced in this litigation as coming out of Bloomberg,
24 showed for both current ratings and historical ratings, right?

25 A. Yes.

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Peresechensky - cross

1 Q. And so you had up on your screen both the current and
2 historical ratings for the 1-A-3 bonds and the current and
3 historical ratings for the 1-A-2 bonds, right?

4 A. Yes.

5 Q. And you looked at the current ratings, which showed the
6 1-A-2 bond as being junior to the 1-A-3 bond, right?

7 A. Yeah, I looked at the current ratings and noticed that it
8 kept on contemporaneously my view of credit --

9 THE COURT: Slow, slow, slow.

10 A. It happened contemporaneously at the time I looked at the
11 credit --

12 THE COURT: It happened contemporaneously?

13 THE WITNESS: Yeah, at the same time, like the same
14 screen, and I saw the 1-A-3 was senior to 1-A-2 based on the
15 Moody's and S&P.

16 THE COURT: Based on what?

17 THE WITNESS: Based on Moody's, the credit Moody's.

18 THE COURT: Moody's gave a higher credit rating to
19 1-A-3 than to the 1-A-2?

20 THE WITNESS: Yes, correct.

21 BY MR. PICKHARDT:

22 Q. Wand in Exhibit 252, if you look at the top, those are the
23 ratings for the 1-A-3 bond, and at the bottom is the ratings
24 for the 1-A-2 bond, right?

25 A. Yes.

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Peresechensky - cross

1 Q. And the rating for the 1-A-3 bond at the top, CAA-3, is
2 higher than the rating for the 1-A-2 bond, CA, at the bottom;
3 is that right?

4 A. Yes.

5 Q. Now, how about the historical ratings that were sitting up
6 on your screen when you were doing the due diligence? What did
7 the historical ratings show with respect to the relative
8 ratings between the 1-A-2 and the 1-A-3 bonds?

9 A. Well, I didn't look at the historical ratings at the time
10 of purchase, but I did notice, yeah, they purport the fact that
11 they initially -- initially had the same ratings and then the
12 1-A-2 had higher ratings in 2009.

13 Q. So, Mr. Peresechensky --

14 THE COURT: Let me get this over time. Initially, A-3
15 and A-2 had the same rating?

16 THE WITNESS: Yeah, right. They were both rated AAA.

17 THE COURT: And when did they start to diverge?

18 THE WITNESS: It looks like the first divergence
19 occurred in 2008, based on this table.

20 THE COURT: And how do they diverge?

21 THE WITNESS: Based on this table, 1-A-2 became double
22 A-1, and the 1-A-3 became double A-3.

23 THE COURT: What does that mean, double A-1 and double
24 A-3?

25 THE WITNESS: Double A-1 is higher rated than double

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1 A-3.

2 THE COURT: Double A-1 is what, the A-2 or the A-3?

3 THE WITNESS: A-2.

4 THE COURT: A-2.

5 THE WITNESS: That was in 2008.

6 THE COURT: And double A-3 is A-3.

7 THE WITNESS: Yes.

8 THE COURT: So that meant that the A-2 had a higher
9 rating than the A-3.

10 THE WITNESS: Yes, in 2008, 2009. Then, in August of
11 2010, the ratings -- the rating on 1-A-3 became higher than the
12 rating in 1-A-2.

13 THE COURT: In 2010?

14 THE WITNESS: Yes.

15 THE COURT: So here, the 1-A-2 was rated higher than 3
16 and then it flipped?

17 MR. PICKHARDT: That's right, your Honor.

18 THE COURT: I'm asking the witness.

19 THE WITNESS: Yeah, in August 2010, the 1-A-3 had --
20 was assigned a higher rating than --

21 THE COURT: And what were the ratings then, in
22 August 2010? What was the A-2?

23 THE WITNESS: A-2 was CA, and A-3 was CAA-3.

24 THE COURT: What does CAA-3 mean?

25 THE WITNESS: CA is lower rating than the CAA-3.

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1 THE COURT: CA is worse than CAA-3?

2 THE WITNESS: Correct.

3 THE COURT: So A-3 had a higher rating than A-2?

4 THE WITNESS: Correct.

5 THE COURT: And both had lower ratings than they had
6 in 2008?

7 THE WITNESS: Yes. They were rated junk by both
8 agencies.

9 THE COURT: When did it become junk, August 2010,
10 according to the Moody's?

11 THE WITNESS: According to Moody's? Moody's they
12 rated junk -- they rated 1-A-3 junk in 2009, and they rated
13 junk A-2 in 2010, but then they --

14 THE COURT: A-3 became junk in 2009?

15 THE WITNESS: Yeah.

16 THE COURT: And A-2?

17 THE WITNESS: Became junk in 2010.

18 THE COURT: In 2010?

19 THE WITNESS: But in 2010, the ratings flipped to
20 reflect that A-3 was a senior to A-2. So both S&P and Moody's
21 had higher rating, current ratings and the ratings of 2010 as
22 for A-2 -- I'm sorry, for A-3 relative to A-2.

23 THE COURT: Don't mumble. Both S&P and Moody's had?

24 THE WITNESS: Higher ratings for A-3 than A-2 at the
25 time of the purchase and since 2011.

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Peresechensky - cross

1 THE COURT: Go ahead.

2 BY MR. PICKHARDT:

3 Q. Now, another piece of due diligence that you recall having
4 done is to have run certain cash flows through an application
5 called Bond Studio, correct?

6 A. Yes.

7 Q. Now, today, your firm has a license for Intex, right?

8 A. Yes.

9 Q. But your firm didn't purchase a license for Intex for use
10 in 2012 when you made this purchase, right?

11 A. Correct.

12 Q. So you were using Bond Studio instead?

13 A. Yes.

14 Q. Now, Intex, you are aware, includes a toggle that allows
15 you to run cash flows either based upon the indenture
16 allocation of losses or on the Pro Supp allocation of losses,
17 right?

18 A. Currently, you're talking about?

19 Q. Yes.

20 A. Yeah, I think it's one of the -- you can -- yeah, it's one
21 of the options I think, yeah.

22 Q. And, in fact, in 2012, when you did your purchase, Intex
23 had that toggle, correct?

24 MR. ROLLIN: Objection, foundation.

25 THE COURT: Overruled. What kind of objection is

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1 that?

2 MR. ROLLIN: I agree.

3 A. I didn't have Intex in 2012, but I think, based on my
4 conversations with broker-dealers, there was a toggle there.

5 Q. Okay. So when you made your purchase, Intex had that
6 toggle. Now, you also still had Bond Studio in addition to
7 Intex, right?

8 A. Yes.

9 Q. And Bond Studio, today, also has that toggle that let's
10 investors run cash flows either based upon the indenture
11 allocation or the Pro Supp allocation, right?

12 A. If you look -- if you look hard enough, you can find that
13 option, but it doesn't really come up automatically when you
14 pull up a bond. It's one of these miscellaneous options that
15 they have, I believe.

16 Q. Now, when you did your cash flows for this transaction in
17 2012, you didn't look at all of the features that were in Bond
18 Studio for this bond, did you?

19 A. I believe I looked at all the relevant features in 2012. I
20 mean, what -- I mean, I ran all the assumptions for my credit
21 model.

22 THE COURT: You what?

23 THE WITNESS: I ran the assumptions for my proprietary
24 credit model. I ran --

25 THE COURT: What model?

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1 THE WITNESS: Proprietary loan-level credit model that
2 we have in Semper. It's the Semper credit. So I entered the
3 vectors for repayments, defaults and varies.

4 THE COURT: So you did your own analysis?

5 THE WITNESS: Yeah, I did my own analysis.

6 THE COURT: With whatever tools you had, right?

7 THE WITNESS: Using Bond Studio, which relied on Intex
8 for the cash model.

9 THE COURT: Using what?

10 THE WITNESS: Using Bond Studio that -- Bond Studio
11 basically is an application. It doesn't have its own cash flow
12 engine. Bond Studio uses Intex as a cash flow engine. Intex
13 is the industry standard cash flow engine that contains the
14 structures for the deals.

15 THE COURT: Did you do a cash flow analysis?

16 THE WITNESS: Yes.

17 BY MR. PICKHARDT:

18 Q. It was not clear to you at that time whether Bond Studio
19 had a similar type of toggle that allowed you to run cash flows
20 either pursuant to the indenture or the Pro Supp?

21 A. I believe, I don't recall there was a toggle at that time
22 in Bond Studio.

23 Q. It wasn't clear to you, was it?

24 A. Yeah. I don't believe there was a toggle.

25 Q. Well, you were deposed in this matter, right sir?

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1 A. Right.

2 Q. If we could please play your testimony from 239 --

3 THE COURT: No, read it. What page?

4 MR. PICKHARDT: It's 239, Line 3.

5 THE COURT: Don't put it up. Don't put it up.

6 MR. PICKHARDT: To 240, 22.

7 THE COURT: One minute. We're going to go to 4:15.

8 I've got a few matters after this.

9 All right. So when you testified at deposition, you
10 were under oath, right?

11 THE WITNESS: Yes.

12 THE COURT: And were you asked the following questions
13 and did you give the following answers?

14 THE WITNESS: Yes.

15 THE COURT: Go ahead, Mr. Pickhardt.

16 BY MR. PICKHARDT:

17 "Q. And that toggle existed at the time that you purchased the
18 1-A-3 bonds, right?

19 "A. I didn't have Intex at that time. I'm not aware of toggle
20 existing on Bond Studio application."

21 THE COURT: He just said that. What are you crossing
22 on? He just said that. He's consistent.

23 BY MR. PICKHARDT:

24 Q. Now, the question:

25 "Q. When you say you were not aware of it existing in Bond

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1 Studio, are you saying it did not exist? Likely did not
2 exist" --

3 THE COURT: Don't ask what's not inconsistent. This
4 is not inconsistent. He said he wasn't aware of a toggle on
5 Bond Studio.

6 MR. PICKHARDT: Your Honor, what's important is he
7 says here, at deposition, in response to that question, "I
8 didn't look at every single feature. It was not clear to me."

9 THE COURT: That's what he said here also.

10 MR. PICKHARDT: "It wasn't apparent to me that there
11 was a toggle."

12 THE COURT: He said the same thing. Don't do it that
13 way, only if there's an inconsistency or if you need to refresh
14 him, and he hasn't needed it and it's not inconsistent.

15 BY MR. PICKHARDT:

16 Q. Now, Mr. Peresechensky, the due diligence that you did did
17 not include consulting with anyone else at Semper with respect
18 to this purchase, right?

19 A. At the time of the purchase, prior to the purchase you're
20 talking about?

21 Q. And you're aware that Moody's publishes a list of bonds
22 that have modeling issues, right?

23 A. Yeah, I believe I stated that in my deposition.

24 Q. You've actually --

25 THE COURT: Don't do that. You'll just get yourself

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1 in trouble.

2 THE WITNESS: I'm sorry.

3 THE COURT: Just answer his question.

4 THE WITNESS: Okay, yeah.

5 BY MR. PICKHARDT:

6 Q. And you're aware that Moody's had that list of bonds with
7 modeling issues?

8 A. Right.

9 Q. And you didn't consult that list at the time that you made
10 this purchase, did you?

11 A. No.

12 THE COURT: What's a modeling issue?

13 THE WITNESS: It's a -- there's some sort of
14 discrepancy between -- you know, there's some sort of
15 structural discrepancy between --

16 THE COURT: Some what?

17 THE WITNESS: There's a structural discrepancy, maybe
18 a coupon is not modeled correctly on Intex or something is
19 mis-modeled on Intex, or it could be a variety of things.

20 THE COURT: So you knew that there was a discrepancy
21 because you consulted the trust indenture?

22 THE WITNESS: No, I wasn't aware of the discrepancy at
23 the time of the purchase.

24 THE COURT: What caused you to look at the trust
25 indenture?

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1 THE WITNESS: The nomenclature of the value was --
2 because typically, as I stated in the option-arm deals, the
3 1-A-2 is junior to my 3. That's why I went to the trust
4 indenture to verify the 1-A-3 was --

5 THE COURT: The higher the number, the more senior the
6 debt?

7 THE WITNESS: I'm sorry, the higher -- No. I mean,
8 the lower the number, the more senior.

9 THE COURT: The lower the number, the more senior the
10 debt, that's right. So the next question I asked is that,
11 given this nomenclature discrepancy, was that what caused you
12 to read the indenture itself?

13 THE WITNESS: Yes.

14 THE COURT: After reading the indenture, Mr. Pickhardt
15 wants to know if you checked any modeling analysis, which you
16 said is also used when there are discrepancies, and your answer
17 was, no?

18 THE WITNESS: The modeling analysis pertaining to the
19 Moody's list, or what are you talking about?

20 THE COURT: Pertaining to this note that you were
21 thinking to buy, the 1-A-3 note.

22 THE WITNESS: Once I look at the indenture, I was
23 certain that the 1-A-3 was a senior tranche.

24 THE COURT: So you didn't look at the modeling
25 analysis?

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1 THE WITNESS: No, the modeling is -- I don't know in
2 what context he's referring to.

3 MR. PICKHARDT: Your Honor, just to clarify, I'm
4 asking about a list that Moody's publishes of bonds that have
5 modeling problems.

6 THE COURT: Did you look at such a list?

7 THE WITNESS: No, I didn't look at that list.

8 THE COURT: Then you can move on.

9 BY MR. PICKHARDT:

10 Q. When you looked at the indenture, the indenture includes
11 provisions that describes what the coupons are on the various
12 tranches of the bonds, right?

13 A. Yes.

14 Q. Did you look at the provision that described the coupons to
15 see whether the coupons for the 1-A-2 bonds and the 1-A-3 bonds
16 were consistent with your understanding as to which of those
17 was senior?

18 A. I'm sorry, what was the last part of your question?

19 Q. Did you look at the relative coupons between the 1-A-2
20 bonds and the 1-A-3 bonds when you were perusing the indenture
21 prior to making your purchase?

22 A. The coupons were stated on Bloomberg. I could look at the
23 coupon on the 1-A-2 on the Bloomberg.

24 THE COURT: And did you look?

25 THE WITNESS: I did. I mean, there were both LIBOR

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1 floaters and LIBOR --

2 THE COURT: So the answer is yes?

3 THE WITNESS: Yes.

4 THE COURT: Okay. So stop.

5 BY MR. PICKHARDT:

6 Q. And did you know at that time that the 1-A-3 bond got a
7 higher coupon than the 1-A-2 bond?

8 A. Yeah.

9 Q. And was it consistent with your experience that a more
10 junior bond would get a lower coupon?

11 A. I mean, it varies in -- in a lot of deals it varies.

12 Coupons has nothing to do with seniority.

13 Q. Have you ever seen that in an option-arms deal, sir?

14 A. I mean, as I stated in testimony, and option arm -- the
15 only -- what I know about option arm deals is there are three
16 bonds in the group A-1, A-2, A-3. A-1 is senior bond, A-2 is
17 the senior mezz and A-3 is a junior mezz.

18 Q. After you did this careful diligence, you testified that
19 you submitted a bid to Nomura.

20 THE COURT: Wait a minute. Mezz is short for
21 mezzanine. Go ahead.

22 A. Yes.

23 Q. After this careful diligence, you submitted a bid to Nomura
24 at 12:30 on September 27th, 2012, right?

25 A. Yeah, around that time.

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Peresechensky - cross

1 Q. And you did that by Bloomberg chat with a number of Nomura
2 representatives, right?

3 A. Yeah, I did it on Bloomberg terminal.

4 Q. I'm handing you a document that has been marked as
5 Exhibit TXBT. Is this the Bloomberg chat that you had with the
6 representatives of Nomura when you submitted your bid on the
7 bond?

8 A. Yes.

9 MR. PICKHARDT: Your Honor, I would move at this point
10 this be admitted into evidence.

11 MR. ROLLIN: No objection.

12 THE COURT: Received.

13 (Plaintiff's Exhibit TXBT received in evidence)

14 BY MR. PICKHARDT:

15 Q. Now, if you turn, you'll see that there are sections of
16 this that are blacked out, which concern communications
17 unrelated to this bond.

18 A. Yes.

19 Q. If you would, please, turn to Page 12 of this exhibit.

20 A. Yes.

21 Q. And there's a message from you at 12:30 p.m.?

22 A. Yes.

23 Q. That says AHM2005-2, 1-A-3, 47-8?

24 A. Yes.

25 Q. That's reflective of your bid of 47 wand a quarter for this

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1 bond, right?

2 A. Correct.

3 Q. And then there is a response --

4 THE COURT: I understand this, this is September 27 of
5 what year?

6 THE WITNESS: 2012.

7 THE COURT: 2012. Boris one UCM is you?

8 THE WITNESS: Yeah, it's my Bloomberg ID.

9 THE COURT: And the AHM2005-2 is the security?

10 THE WITNESS: Yes.

11 THE COURT: What does 1-A-3 mean, that's the note?

12 THE WITNESS: Yeah, that's the note.

13 THE COURT: 47-8, what is that?

14 THE WITNESS: That was my bid on this list, 47 and a
15 quarter, 86.

16 THE COURT: Go ahead.

17 BY MR. PICKHARDT:

18 Q. You immediately got a response from an B. McNamara. Who is
19 that?

20 A. Brennan McNamara is a salesperson at Nomura.

21 Q. And he said: K. Will come right back to you on that one,
22 right?

23 A. Yes.

24 Q. Then if you forward a few pages, it picks up at 2:24; so
25 about two hours later?

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Peresechensky - cross

1 THE COURT: What's the production number?

2 MR. PICKHARDT: It's at Page 19, your Honor.

3 Q. There's an E. Horowitz?

4 A. Yeah.

5 Q. Mr. Horowitz is a trader at Nomura; is that right?

6 A. Yeah, Eric Horowitz.

7 Q. And he gets back to you and he says, AHM2005-2, 183, 47.25?

8 THE COURT: AHM2005-2, the bond is 183, and the price
9 is 47.25 or 47 and a quarter.

10 Q. And then he follows up and he asks: Done? With a question
11 mark, which was his way of asking do we have a trade, right?

12 A. Yes.

13 Q. And your response was: For real? With a question mark.
14 The reason you said "for real?" is because you were surprised
15 that you were going to be the winning bidder in his auction,
16 right?

17 A. Yeah, I thought I was submitted a -- I mean, I thought it
18 was a very attractive purchase at that price, at 47.8, and
19 therefore, I just wanted to make sure that I bought bonds.

20 Q. Because he comes back and says: Yes, for real. And then
21 you respond and say: Might have ass pulled on it. Let me
22 check. Now, "ass pulled" is a term that means you submitted a
23 lowball bid that you never expected to have accepted, right?

24 A. I wouldn't -- I wouldn't classify it as never. I would say
25 a lowball bid, there's a low probability of getting it pulled,

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1 yeah.

2 Q. That there was little chance of buying it at that price,
3 right?

4 A. Yeah, it's just a term we coined.

5 Q. And that you had to go back and let me check?

6 A. Yes.

7 Q. Now, ass pulled is a slang term for pulled out of your
8 butt, right?

9 A. I don't know. I mean, it depends on how you refer to it.

10 THE COURT: How did you understand it?

11 A. I just -- I understand it as a low -- in the context of the
12 conversation, it was a lowball bid, and we refer to ass pull
13 like just a lowball bid, where the buyer is not really serious
14 about buying and paying the level that requires to buy the
15 bonds.

16 THE COURT: So you didn't expect your bid of 47 and a
17 quarter to be accepted?

18 THE WITNESS: I guess, yeah, I guess at that time, I
19 expressed some --

20 THE COURT: Don't guess. Was that the truth, you
21 didn't expect your bid to be accepted?

22 THE WITNESS: Yeah, I thought it was an attractive
23 purchase, yeah.

24 THE COURT: And when it was accepted, you were
25 surprised?

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1 THE WITNESS: A little bit, yeah.

2 THE COURT: You started to worry, did I do the right
3 thing?

4 MR. PICKHARDT: Well, your Honor, that actually goes
5 to my next question. You say: Let me check.

6 THE COURT: Right.

7 BY MR. PICKHARDT:

8 Q. And so at this point, on September 27th, you know you have
9 seen a bond that, for the first time in your career, you'd seen
10 an option-arm bond that had this nomenclature abnormality; you
11 had for the first time in your career observed a bond that had
12 an indenture on Bloomberg, which you normally couldn't find;
13 you had put in a lowball bid that you didn't expect to be
14 accepted and they had come back and said, done, can we do this
15 deal? You said let me check?

16 A. I didn't say it was a lowball bid. I said it might have
17 been. That's why I wanted to check. Two hours had passed from
18 the time I submitted the bid.

19 Q. Oh, so at that point, you didn't necessarily remember the
20 work you had done two hours previous; is that right?

21 A. I wanted to check my run from two hours before.

22 THE COURT: Whatever it is, he wanted to check. He
23 was not prepared to go ahead, even though his bid had been
24 accepted.

25 Q. And so you then had an opportunity to go and do a further

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1 check?

2 A. Yes.

3 Q. How much time did you spend on that additional diligence,
4 knowing all of the information you knew about the abnormalities
5 in this bond and that you had just had a bid accepted that you
6 did not expect to be accepted?

7 A. I checked the run. It was -- it must have been right on my
8 Bond Studio screen; so I looked at the results of the run to
9 see how much collateral was liquidated, how much of a
10 write-down it was, and to make sure that in stress scenarios
11 the bond didn't suffer losses, and it looked attractive across
12 the scenarios. It looked attractive across the base-case
13 scenarios, the stress-case scenarios, and so when I looked at
14 the results of the run, I felt comfortable with that purchase.

15 Q. And so that was between the time of 2:24:56, when you said
16 let me check, and 2:26:20 when you said yes?

17 A. Yeah, I had run --

18 Q. So you did all of that in a minute and 24 seconds; is that
19 what --

20 A. I didn't have -- I didn't have --

21 THE COURT: Let him finish the question before you
22 give the answer.

23 Q. The extent of your further due diligence on this bond,
24 based upon this information, was contained within a minute and
25 24 seconds, right, sir?

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1 A. No, it's -- I already done the due diligence. I wanted to
2 check --

3 THE COURT: The answer is, yes? You did all this new
4 due diligence? You reviewed your due diligence --

5 THE WITNESS: Yes.

6 THE COURT: -- in a little bit more than a minute?

7 THE WITNESS: Yes, because I had the bond --

8 THE COURT: Okay. You don't have to give a reason.
9 Yes, the answer is yes.

10 THE WITNESS: Okay.

11 BY MR. PICKHARDT:

12 Q. And you testified earlier that the next day you had a
13 conversation with a trader from Mesirow, in which you had an
14 agreed-upon sale of this same bond to Mesirow at a price of 49
15 and a half, right?

16 A. Yes.

17 Q. And you testified that you had a phone call, where the
18 trader came back to you and asked to get out of the deal,
19 right?

20 A. Yeah.

21 Q. Well, in fact, wasn't there Bloomberg chats on this
22 subject?

23 A. Yeah, I think he -- yes. He send me a message on Bloomberg
24 as well.

25 Q. Okay. And I put in front of you a document that's been

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1 marked as TXBH. This is a Bloomberg chat that you had with a
2 trader from Mesirow, Mr. Haghighat, that next day, right?

3 THE COURT: Are you offering BT in evidence?

4 MR. PICKHARDT: Yes, your Honor, I would.

5 THE COURT: Objection?

6 MR. ROLLIN: No objection.

7 THE COURT: Received.

8 BY MR. PICKHARDT:

9 Q. And is it correct --

10 THE COURT: And is TXBH the Bloomberg chat with
11 Mesirow on the next day, September 28th?

12 THE WITNESS: Yes.

13 MR. PICKHARDT: That's correct, your Honor.

14 THE COURT: Are you offering?

15 MR. PICKHARDT: Yes, I'm offering it into evidence.

16 MR. ROLLIN: No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit TXBH received in evidence)

19 BY MR. PICKHARDT:

20 Q. Now, on Page 2 of Exhibit TXBH, there's a message from
21 Mr. Haghighat at the bottom of that page, on September 28th at
22 4:42 p.m. in which Mr. Haghighat says to you: Boris, AHM '05-2
23 1-A-3 is on problem list. To which you respond, question mark.
24 He goes on to say: Class 1-A --

25 THE COURT: I'm not seeing this.

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1 MR. PICKHARDT: It's on at the very bottom of the
2 page, your Honor.

3 THE COURT: Thank you.

4 BY MR. PICKHARDT:

5 Q. You go on to respond at the top of the next page with a
6 question mark?

7 A. Yes.

8 Q. And Mr. Haghighat, who you testified earlier was a trader
9 that you trusted, came back to you and said: Class 1-A-3 is
10 junior to 1-A-2, right?

11 A. That's the -- that's what the message says.

12 Q. And then you add another question mark, and Mr. Haghighat
13 then provides -- then gives you a number of additional messages
14 that contain information about the discrepancy between the
15 indenture and the Pro Supp, right?

16 A. Correct.

17 Q. Now, at this point in time, you decide, knowing this
18 information, that you're not going to enforce the trade that
19 you have with Mr. Haghighat at a profit to your firm, right?

20 A. Yeah, I thought it was the proper thing to do.

21 Q. Okay. So you decided to go ahead and cancel the trade
22 after Mr. Haghighat had given you this information?

23 A. Yes.

24 Q. Okay. Now, you testified at length about having reviewed
25 the indenture off of Bloomberg?

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Peresechensky - cross

1 A. Yes.

2 Q. And you claim that you downloaded that indenture as part of
3 your due diligence before you purchased the bond and went to
4 section 3.38 and read through the allocation of loss
5 provisions, right?

6 A. Correct.

7 Q. Now, prior to this litigation, in which your attorneys have
8 put in papers that -- to this Court, that you reviewed the
9 indenture and that provision prior to making this purchase --

10 THE COURT: Fix up the question. Don't make it up.
11 Withdraw the question. Start again.

12 MR. PICKHARDT: I withdraw that.

13 Q. Are you aware of any documents that corroborates you having
14 reviewed the indenture prior to when you made this purchase?

15 A. I downloaded the indenture from the Bloomberg. It was
16 readily available on Bloomberg's page.

17 THE COURT: Listen to the question.

18 Q. Are you aware --

19 THE COURT: Now, prior to this litigation --

20 MR. PICKHARDT: I'm sorry.

21 THE COURT: -- are you aware of any documents that
22 corroborate that you reviewed the indenture prior to your
23 making the purchase? Do you know of any piece of paper that
24 shows that?

25 THE WITNESS: Well, the --

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1 THE COURT: Yes, no or what?

2 THE WITNESS: The indenture was available on
3 Bloomberg. So I downloaded the indenture from Bloomberg.

4 THE COURT: So you don't have a piece of paper because
5 it was on the screen?

6 THE WITNESS: Yes. It was right on the screen. I
7 needed to --

8 THE COURT: That's your answer.

9 THE WITNESS: Right.

10 BY MR. PICKHARDT:

11 Q. And there's no statements that you put in e-mails or other
12 communications --

13 THE COURT: Mr. Pickhardt, we've covered that already.
14 I think this might be a good time to break.

15 MR. PICKHARDT: We can break, your Honor, or I could
16 finish this subject area, whichever.

17 THE COURT: Well, I've got three things waiting for
18 me, a sentencing that will take us past 5:00; so I think we'll
19 stop now. Let's go off the record.

20 (Discussion off the record)

21 THE COURT: We'll go on the record. We'll recess now
22 until 1:00 tomorrow, at which time, we'll finish up the
23 testimony.

24 So, Mr. Peresechensky, you're not to talk about the
25 case with anybody until you finish your examination. Do you

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1 understand?

2 THE WITNESS: Yes.

3 THE COURT: And do you understand, counsel?

4 MR. ROLLIN: Yes.

5 THE COURT: We'll finish up your testimony. Both
6 sides plan to rest. They'll immediately go into an argument,
7 an hour to each side, and probably on Thursday morning I'll ask
8 you to come back in and I'll deliver my findings. That will be
9 the plan. Okay?

10 All right. Now, you see there's a busy courtroom and,
11 of course, everyone came to watch you. On the chance they
12 might have their own business, see how quickly we can push
13 everything to the side.

14 MR. PICKHARDT: Thank you, your Honor.

15 (Adjourned to July 9, 2014, at 1:00 p.m.)
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